BRITISH COLUMBIA POLICE COMMISSION

SPECIAL PROVINCIAL CONSTABLES: A PLAN FOR ACCOUNTABILITY

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SPECIAL PROVINCIAL CONSTABLES: A PLAN FOR ACCOUNTABILITY

Report prepared by Jill H. McIntyre for the
British Columbia Police Commission

April, 1991

This report was prepared for the British Columbia Police Commission. While reflecting the views of the Commission, the report does not necessarily reflect the views of the Solicitor General of British Columbia, nor the Government of the Province of British Columbia.

SPECIAL PROVINCIAL CONSTABLES

A PLAN FOR ACCOUNTABILITY

EXECUTIVE SUMMARY:

There are approximately four hundred special provincial constables in British Columbia who have been appointed by the Solicitor General under the authority of the Police Act. These special provincial constables are employed by seventeen employers, including private corporations, federal and provincial crown corporations, and ministries of the provincial government. They do not act under the direction of any police force and no scheme exists by which these special constables are accountable to the government.

The powers of special provincial constables vary according to the terms of their appointments and the job responsibilities they have been hired by their employers to perform, but are never as extensive as the powers accorded to members of municipal or provincial police forces.

In the majority of cases, the special provincial constable appointment is used to enhance the statutory powers given to government employees and employees of crown corporations. In others, the appointment confers powers on persons who would otherwise have only the powers of an ordinary citizen. In some of these latter cases, the practice of making special constable appointments has resulted in the emergence of "quasi-police departments" whose members consist of special constable appointees.

The lack of any scheme whereby special provincial constables are accountable to the government has resulted in the employer of the special constable assuming practical responsibility for most aspects of accountability. This responsibility is not recognized in the legislation, but it is logical and consistent with the fact that special constable status does no more than enhance the power of the employee to do the tasks assigned to him or her by the employer.

The recommended scheme preserves the responsibility of the employer to ensure accountability on the part of the special constable, and imports aspects of public accountability. The degree of public accountability is not as extensive as that demanded from municipal police officers.

The recommendations deal with the appointment process, training, the possession and use of firearms, discipline, complaints, liability and perception of status. They call for a formalized policy on appointments and qualifications of appointees. They recommend that the employer retain the responsibility to train the special constable and that the Police Commission be given the authority to oversee the training and operational standards of the employer. The Solicitor General should know which special constables require firearms in the course of their employment and the Police Firearm Regulations should apply to special constables. The report makes these recommendations. The employer should retain the right to discipline the employee if an appointment under the Police Act is made. However, the Solicitor General must also retain the right to revoke the appointment and must therefore be kept apprised of any disciplinary matters that would go to the fitness of the special constable to hold the appointment. The recommendations call for a legal recognition of the employer and the Solicitor General as joint disciplinary authorities. It is also recommended that the Solicitor General enter into contractual arrangments with employers of special constables, wherein the employer agrees to notify the Solicitor General of any circumstance that might go to the fitness of the special constable to hold the appointment. These contracts would deal with other matters as well and would be specific to each employer.

The complaint process recommended is different from that applicable to municipal police officers. Any complaint about the conduct of a special constable would be referred to the complaint commissioner for a determination as to whether the substance of it went to the fitness of the constable to hold the appointment. Depending on this determination, the complaint would either be relegated to the unfettered discretion of the employer or the investigation and outcome of it would be monitored by the complaint commissioner. In all but the most rare cases, the responsibility for investigating the complaint would fall to the employer. After the employer determines whether discipline will be imposed on the employee, the complaint commissioner will make a recommendation to the Solicitor General on whether or not the appointment should be revoked.

The report also recommends that employers be liable for the torts of special constables, and that in general, special constables be distinguished from police officers.

SPECIAL PROVINCIAL CONSTABLES

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SPECIAL PROVINCIAL CONSTABLES
A Plan for Accountability

I. INTRODUCTION:

Special provincial constables are appointed by the Solicitor General under Section 9 of the Police Act.[1] They do not work under the direction of, nor are they accountable to, any municipal police force or the Royal Canadian Mounted Police.[2] These special provincial constables are employed by a number of different employers and perform a variety of functions. The versatility of the appointment is the hallmark of the office. It is also the major stumbling block to designing a coherent and workable system of accountability.

The Police Act provides for the appointments but it does not go much further. The appointments themselves, including an assessment of whether or not an appointment is necessary or desirable, and whether or not a potential appointee is qualified to be appointed, are dealt with on an ad hoc basis. Similarly, questions of accountability, including training, standards to be met, and discipline have either not been legislated or have been unsatisfactorily legislated. The only legislative provisions that do deal with special provincial constables, those concerning complaints, are fraught with difficulty and are probably unenforceable.

The concern of the police community and the provincial government about the lack of accountability on the part of special provincial constables is not new. While it has long been recognized by everyone knowledgeable about such appointments that some attention to them was badly overdue, the need for a full examination of the issue was highlighted when the B.C. Transit Security Service requested that the group of special provincial constables employed by it be recognized as a police force.[3]

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[1]. *S.B.C. 1988, c. 53.*

[2]. *A number of municipal employees have been appointed as special provincial constables and work in R.C.M.P. detachments as exhibit custodians. The R.C.M.P. may exercise some defacto direction over these employees but they are not R.C.M.P. employees.*

[3]. *The ramifications of such a step, that is, the recognition of a group of persons with some police powers as a police force have not been addressed in this paper. The B.C. Transit situation can be viewed as a catalyst to an overdue examination of special constable appointments and accountability but an in-depth study of the issues involved in policing by employees of crown corporations is not within the mandate of this study.*

The British Columbia Police Commission and the Police Services Branch of the Solicitor General both have an interest in such appointments. The Police Commission is responsible for setting the standards for municipal police forces and is the body to whom municipal police forces are ultimately accountable in discipline matters. It would be a logical extension of its mandate to oversee the standards and conduct of other persons appointed under the Police Act. Furthermore, through amendments to the Police (Discipline) Regulations passed in 1989, complaints against special provincial constables come under the auspices of the Complaint Commissioner.[4]

The Police Services Branch receives applications for appointments as special provincial constables and keeps records of such appointments. Because both the Police Commission and the Police Service Branch have legitimate interests in such appointments, it was agreed that both of those organizations would examine different facets of the question. The Police Services Branch is examining the appointment function, including the rationale for such appointments and the powers given under the appointments.

This report, prepared for the B.C. Police Commission, analyses the issues surrounding the appointment and accountability of special provincial constables and presents a set of recommendations for implementing the measure of accountability currently missing.

The discussion must be preceded by one acknowledgment and one caution. First, the acknowledgment: Very little has been written on the subject of special provincial constables in Canada. Most of what has been written is at least ten years old and has, for the most part, been written by four individuals: Philip C. Stenning, Clifford D. Shearing, Mary F. Cornish and David J. Freedman.[5] The body of literature written by these individuals was useful in providing background information for this report.

Next, the caution: The focus of this paper, special provincial constables, is artificially restricted. It is apparent in examining the law in this area that the issues surrounding the

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[4]. *These amendments appear to have been hastily drafted and are unsatisfactory in a number of respects. They will be discussed in Part III.*

[5]. *The main works of which are as follows: Stenning and Cornish, The Legal Regulation and Control of Private Policing in Canada (1975), Freedman and Stenning, Private Security, Police and the Law in Canada (1977), Stenning, Firearms and the Private Security Industry in Canada, (1979) and Stenning, Postal Security and Mail Opening: A review of the Law. (1981).*

appointment of autonomous special constables--the powers they are given and the jobs they do--is only one aspect of a massive body of issues that relate to non-police persons with police powers. Social science literature may make distinctions among public, quasi-public and private police, or "levels" of policing may be discussed, with the primary level being public police, the secondary level being quasi-public police (such as those employed by crown corporations) and the third level, private police and security guards. The multitude of issues raised by these concepts, and a full exploration of the impact that policing by non-public police officers has, and will have, on policing in general have not been examined in this province, although we understand that such an examination is contemplated by the Government. In this report, an attempt is made to separate the issues specific to "special constables" from the broader issues that relate to policing by persons and organizations other than public police officers and forces. However, some overlap will inevitably occur. Where such overlap occurs and is not fully discussed, the reason for the incomplete discussion is the desire not to become enmeshed in a discussion of issues that rightfully belong to a comprehensive policy examination of policing by persons and organizations other than the public police.

Further, the potential involvement by the government in such an examination was the major factor in not addressing, in this study, the fundamental question of whether there is a need or justification for <u>any</u> autonomous special provincial constable appointments. Such a starting point was not appropriate for the Government's needs at this time. Because there are now approximately 400 special provincial constables in the province, the purpose of this report is to develop a set of recommendations on how best to extract accountability from them. The rationale for the existence of, and alternatives to, such appointments should form part of a more extensive study on the issues described above.

This report works from a general treatise on the law to specific recommendations and contains five parts, the first of which is this introduction. The second part sets out the state of the law in relation to special provincial constables. The third part describes the current situation in British Columbia as it relates to special provincial constables. It describes the appointment process and sets out the organizations that employ special constables. Aspects of accountability, such as training, discipline and the complaint process are also dealt with in that section.

The fourth part examines the policy considerations and sets out the options available to this province in its attempts to make special constables accountable. The final portion of the paper contains the recommendations.

PART II. STATUS OF A SPECIAL PROVINCIAL CONSTABLE:

The rationale for ensuring that special provincial constables are not appointed in a void of accountability must be attributable to the powers, duties and obligations inherent in the appointment. The core of the issue to be examined before discussing accountability and methods of achieving it must, therefore, rest on the status of a special provincial constable. To determine the extent to which a special provincial constable should, from a philosophical point of view, be accountable to government as a result of his or her appointment, it is necessary to determine exactly how the powers, duties and obligations of a special constable are different from those possessed by an ordinary citizen.

The appointment carries with it a legal status, the nature of which is illusive but important.[6] Each person who has been appointed a special provincial constable has a body of powers which can be exercisable by him or her in relation to such matters as arrest, search and seizure, the use of force and so on. Some of these are his or her powers as a citizen;[7] some are those given to him or her under the legislation he/she enforces; some relate to the fact that he/she is an occupier of property or the duly authorized agent of the occupier/owner of property.[8] Another group of powers relate to his or her appointment as a special provincial constable.

It is generally accepted that a special provincial constable is a peace officer,[9] and the reasons justifying the acquisition of special constable status generally relate to the desire or necessity

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6. *Status relates both to the controversy surrounding the independence and common law duties of a "constable" and to the statutory rights and duties of a "peace officer". These two concepts have become so intermingled with one another that only the former is relevant to this discussion. However, the concept of the independence of the common law constable should be acknowledged because it is one that arises from time to time when the powers of special constables are discussed. This discussion will be found at page 15 et. seq.*

7. *A citizen is entitled to lay charges and, in some circumstances, make arrests (See, e.g. Criminal Code, ss. 494(1)) and use force (See e.g. Criminal Code ss. 25(1), 27, 40 and 41).*

8. *See, e.g. Criminal Code, s. 494(2).*

9. *See, for example, Stenning, Philip C., Firearms and the Private Security Industry in Canada, Solicitor General Canada, 1979, at p. 74 et. seq.; Stenning Philip C. and Cornish, Mary F., The Legal Regulation and Control of Private Policing in Canada, Centre of Criminology, University of Toronto, 1975. at p. 200; report of the Proceedings. Private Policing and Security in Canada: A workshop. Centre of Criminology, University of Toronto, 1973.*

to attain "peace officer" status and the protections that go with that status.[10] It is clear that special constables do have some degree of peace officer status, but they do not have full peace officer status. Because the extent of peace officer status conferred upon a special provincial constable is fundamental to designing a scheme of accountability for the office, an analysis of the law is appropriate.

A. Peace Officer Status:

The logical place to begin is with the Criminal Code definition of peace officer. Section 2 lists seven categories of persons as included in the definition of "peace officer":

> *"peace officer" includes*
>
> *(a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace;*
>
> *(b) a warden, deputy warden, instructor, keeper, gaoler, guard and any other officer or permanent employee of a prison;*
>
> *(c) **a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process.***
>
> *(d) an officer or person having the powers of a customs or excise officer when performing any duty in the administration of the Customs Act or the Excise Act,*
>
> *(d.1) a person appointed or designated as a fishery officer under the Fisheries Act when performing any of his duties or functions pursuant to that Act*
>
> *(e) the pilot in command of an aircraft*
>
> > *(i) registered in Canada under regulations made under the Aeronautics Act, or*
> > *(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations,*

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[10]. *A workshop on private policing and security in Canada held at the University of Toronto in 1973 stated that the main reason put forward for requiring special constable status was the necessity to acquire peace officer status. The particulars of this necessity were found to be 1) the need to legalize detention and interrogation of persons arrested; 2) The need of the right to arrest on reasonable and probable grounds rather than as a citizen, which must find the person committing the offence; 3) The need to give security personnel extra protection to complement extra duties. (A charge of assault against a security person with special constable status would be a more serious offence than if that status was not held); 4) Employers felt that special constable status would require the employee, under the Criminal Code, to act in certain situations, e.g. riot.*

while the aircraft is in flight, and

(f) officers and men of the Canadian Forces who are
(i) appointed for the purposes of section 134 of the National Defence Act, or

(ii) employed on duties that the Governor in Council, in regulations made under the National Defence Act for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and men performing them have the powers of peace officers.

The portion of the Criminal Code definition that is most relevant to the law as it relates to special provincial constables is the one highlighted, which is contained in the British Columbia Interpretation Act[11] definition of peace officer as well. It would be a natural assumption, but a mistaken one, to examine the definition and assume that because "constable" is included in the definition, a special provincial constable is a peace officer for all purposes under the Criminal Code, or indeed for all provincial purposes.

It would similarly be a mistake to assume that peace officer status is a static concept. While it is probably true that a public police officer maintains his peace officer status 24 hours a day and 7 days a week, the same cannot be said to be true for special provincial constables.

Case law indicates that the peace officer status granted by the appointment is a limited peace officer status. The leading authority for this proposition is R. v. Beaman, a 1963 decision of the Supreme Court of Canada.[12] That case is authority for the principle that a person given the "powers and authorities of a provincial constable" and constituted "*ex officio* a peace officer" is a "peace officer" within the meaning of section 2 of the Criminal Code only for the purposes of the legislation under which he or she was given those powers. The case dealt with the New Brunswick Game Act which provided in section 18:

> *"Every warden may and shall, for the purpose of this Act, **exercise all the powers and authorities of a provincial constable**, and shall have the same power to ask and require aid and assistance in the performance and execution of his duties as a peace officer or constable in the execution of his duties as such, and **every warden shall be ex officio a peace officer within the meaning of any law for the protection of peace officers.**"(emphasis added)*

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[11]. *R.S.B.C. 1979, c. 206.*

[12]. *(1963) 2 C.C.C. 97.*

Ritchie J. held that

> *"In my view, the provisions of s. 18 of the Game Act not only purport to give but do give to every "game warden" the powers of a constable and therefore of a "peace officer" within the meaning of ss. 2(30)(c) and 110 of the Cr. Code. I agree that these powers are limited to provincial laws and are conferred solely for the purpose of the Game Act but this does not alter the fact that any person who wilfully obstructs a "game warden" in the execution of his duties under that Act is committing the indictable offence of wilfully obstructing a "peace officer in the execution of his duties" contrary to s. 110 of the Cr. Code."*

Beaman spawned almost 3 decades of cases considering whether particular officials were peace officers and for what purposes. One of the most important, R. v. Laramee[13], came out of the Yukon Territories. Despite the fact that Laramee is a Magistrate's court decision, it has consistently been followed by courts in Canada.[14]

R. v. Laramee dealt with the right of a city constable who was appointed under a municipal by-law and empowered to enforce the by-laws of the municipality to demand, as a "peace officer", that a person provide a breath sample pursuant to Criminal Code section 233 (as it was then). In a well reasoned and thorough judgment, de Weerdt, J. held that the test of whether a person is a peace officer under the Criminal Code lies in the qualifying words of the definition of peace officer, "employed for the preservation and maintenance of the public peace". The learned judge ruled that although there is a legal presumption that a person who acts as a peace officer is a peace officer, he must examine any contrary evidence before him. The evidence before him indicated that the constable in question was appointed under R.O.N.W.T. 1956, c. 73 which provided for the appointment of a constable and purported to give that constable "the powers and immunities of a peace officer in so far as such powers and immunities relate to and are necessary for the carrying out of his duties." The judge stated that there was no evidence before him as to the scope of the duties to be performed by city constables under city by-laws, but that he had to give judicial notice to the Ordinances of the Northwest Territories

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13. (1972), 9 C.C.C. (2d) 433, (N.W.T. Mag. Ct.)

14. See, for example, R. ex rel. Reimer v. Ingram [1974] 5 W.W.R. 759 (Sask. C.A.) where a constable appointed under the Rural Municipality Act which stated he "shall have generally all the powers and privileges and be liable to all the duties and responsibilities that belong by law to constables and police officers" was found not to be a "traffic officer, police officer or police constable" within the meaning of another provincial statute. Also, Wright v. The Queen [1973] 6 W.W.R. 687, (Sask. Dist. Ct.); Office de la Construction du Quebec c. Daniel LaPlante [1985] C.S.P. 1103; Attorney General B.C. v. Smith [1982] 5 W.W.R. 25 (B.C.S.C.); R. v. Polchies (1981) 35 N.B.R. (2d) 185 (N.B.Q.B.).

> *"..so that if their scope is such as to permit the city to enact by-laws relating to the preservation and maintenance of the public peace then I shall have to say that the presumption in favour of Sergeant Cook being a "peace officer", on the face of it, has not been displaced; but on the other hand, if the Ordinances deny city by-laws authority to regulate preservation for, and maintenance of the public peace, then I shall have to rule that the presumption cannot operate and that Sergeant Cook could not, in law, have acted as a constable employed to preserve and maintain the public peace and so, on that view of the law, was not a "peace officer" under ss. 2 and 235 of the Criminal Code."*[15]

The learned judge followed the Supreme Court of Canada's reasoning in Beaman and a number of other cases in holding that "the preservation and maintenance of the public peace" is the test to determine if a person is a peace officer. He said that

> *...even if a municipal constable is limited to by-law enforcement, he may be clothed under the Municipal Ordinance with all the powers, rights and protections afforded to a peace officer by the Criminal Code for the purposes (and no more than that) of by-law enforcement. Criminal Code enforcement, where restricted to "peace officers", e.g., arresting persons charged with certain criminal offenses, etc., is beyond the powers and immunities of a municipal constable. Such constable may be entitled to serve by-law summonses, and indeed may well have certain powers of arrest in by-law matters (though this is sharply questioned in Bird's, Manual on Arrest for Peace Officers (1963), p. 111, from which it would appear that such arrests are a distinct rarity, if they ever occur at all). Beyond the scope of by-law enforcement, however, such constables are like every other citizen and have no special authority or powers."*[16]

The judge held that the constable was a constable in name only and was no more than a by-law enforcement officer in the eyes of the law. He was therefore not a "peace officer" for the purposes of s. 233 of the Criminal Code. He could be regarded as a peace officer under s. 2 of the Criminal Code, and related provisions, only in so far as may be necessary for the due performance of his duties of by-law enforcement."[17]

The significant distinction between Laramee and Beaman is that in Beaman the officer was merely "given the powers of constable" while in Laramee the officer had been appointed a constable. If there was any distinction to be made between an office holder and a person with the powers of that person, Laramee obliterated that distinction. The result is that when

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[15]. *At 441.*

[16]. *At 443.*

[17]. *At 444.*

considering whether a person comes within the Criminal Code definition of "peace officer" the title given the person is of little relevance unless that person is "employed for the purposes of the public peace."[18]

What does "employed for the purposes of the public peace" actually mean? The accepted definition of "public peace" as it relates to the definition of "peace officer" appears to be an early Supreme Court of Canada decision, Rex v. Magee.[19] In that case, Haultain C.J.S. said:

> *"'Public peace' may be taken as equivalent to 'the King's Peace' in its broader and later signification. the King's Peace is the 'legal name of the normal state of society.' (Stephen's History of the Criminal Law, vol. 1, p. 185.) 'The Peace' is defined in Murray's New English Dictionary as being 'the King's Peace in its widest sense, the general peace and order of the realm as provided for by law'.*
>
> *"'Peace,' particularly connotes 'a quiet and harmless behaviour towards the King and his people.' Stroud's Judicial Dictionary.*
>
> *"'The King's Peace at first only extended to crimes which were the original pleas of the Crown but the King's Peace by an easy process extended itself until it had become an all embracing atmosphere. (2l Pollock & Maitland, 462)*
>
> *"'Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose or security as opposed to one of violence or warfare but likewise a state of public order and decorum. (Bouvier, Law Dictionary.)'"*[20]

Since Beaman and Laramee were decided, cases in Canada have held that a person, no matter what title he or she is given, is only a "peace officer" to the extent that his or her duties involve the maintenance and preservation of the public peace as defined above. The law in this regard is consistent with cases considering whether a bailiff is a peace officer[21] and is also supported by a line of cases considering subsection 2(f) of the definition of peace

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[18]. *This is consistent with the wording of the subsection which also includes any "other person" as a peace officer if that person is "employed for the purposes of the public peace."*

[19]. *17 Sask. L.R. 501, [1923] 3 W.W.R. 55, 40 C.C.C. 10.*

[20]. *At p. 57. These passages have been quoted with approval in Regina v. Jones, etc., (1975) 30 C.R.N.S. 127; Regina v. Whiskeyjack and Whiskeyjack (1984) 17 C.C.C. 245, (Alta. C.A.).*

[21]. *See R. v. Wallace, Hall and Leach (1959) 125 C.C.C. 72; R. v. Lipman (1935), 63 C.C.C 148, where a "bailiff" was held not to be a "peace officer" within the meaning of s. 2 of the Criminal Code notwithstanding inclusion of bailiffs, in para. (c) of the definition.*

officer, which subsection deals with the military police.[22]

If the person comes within the definition of "peace officer" then peace officer status will be accorded for all duties that fall within the scope of duties to be performed by that person. The result is that peace officer status will only be accorded to a person if they are acting within the scope of the duties for which they were hired. Thus, a game warden who "has and may exercise all the powers, authorities and immunities of a peace officer as defined in the Criminal Code" is a peace officer within the meaning of the Criminal Code provisions on obstructing a peace officer when engaged in the execution of his duties pursuant to the Act under which he was appointed[23] and an animal control officer whilst acting within the limits of the duties he is appointed to carry out may also be a peace officer[24] as may a conservation officer[25] and a wildlife officer.[26] A pound keeper who was also appointed a special constable is a peace officer because he was acting within the scope of the duties created by the by-laws.[27]

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[22]. *Nolan v. The Queen, (1987) 34 C.C.C. (3d) 289 (S.C.C.). Although the Nolan case deals with a different subsection of the definition of "peace officer" the reasoning of the Supreme Court of Canada is important for our purposes since it confirms that the words in s. 2(f) (ii) "appointed for the purposes of section 134 of the National Defence Act" must be construed as words of limitation on the authority, an approach taken by the Supreme Court of British Columbia in R. V. Smith (1982), 67 C.C.C. (2D) 418, [1982] 5 .w.w.r. 25, 36 B.C.L.R. 200 (B.C.S.C.) (upheld by the B.C.C.A., 2. C.C.C. (3D) 250, [1983] 1 W.W.R. 693, 18 M.V.R. 222 (B.C.C.A.) and by the Alberta Court of Appeal in R. v. Harvey (1979), 18 A.R. 382, 5 M.V.R. 41 The Supreme Court of Canada held:*

> *"I would therefore conclude that the definition of "peace officer" in s. 2 of the Criminal Code serves only to grant additional powers to enforce the criminal law to persons who must otherwise operate within the limits of their statutory or common law sources of authority."*

[23]. *R. V. Rushton et al. (1981), 62 C.C.C. (2d) 403, (N.B.C.A.).; R. v. Cormier (1980), 31 N.B.R. (2d) 563, 75 A.P.R. 563, (N.B.Q.B.).*

[24]. *R. v. Jones and Huber (1975), 30 C.R.N.S. 127 (Y.T. Mag. Ct.); In this case, the animal control officer was not appointed a constable, but was found to be included in the definition of peace officer that refers to "other person employed for the preservation and maintenance of the public peace".*

[25]. *R. v. Renz, (1972), 10 C.C.C. (2d) 250, (Ont. C.A.). That case dealt with whether a person who impersonated a conservation officer could be convicted of impersonating a peace officer under the Criminal Code. The Court of Appeal held that because a conservation officer was vested under the Game and Fish Act, R.S.O. 1970, c. 186 with the powers necessary to bring him within the definition of "peace officer" in the Criminal Code, a person that impersonated a conservation officer could be convicted of impersonating a peace officer.*

[26]. *R. v. Rutt (1981) 9 Sask. R. 14 (Sask. C. A.).*

[27]. *R. v. Moore (1983) 10 W.C.B. 32 (Man. Co. Ct.)*

When a person with peace officer powers steps beyond the duties he or she would normally be expected to perform, however, peace officer status is not accorded to them. Thus, a police constable appointed by a rural municipality to enforce bylaws is not a "peace officer" authorized to demand a breath sample under the Criminal Code[28] nor can he act under another provincial statute when that statute is not within the stated purposes for which he was appointed.[29]

The result of the case law is that the question of whether or not a person will be considered to be a peace officer at any point in time cannot be answered without examining the instrument under which the person was appointed and the normal scope of duties of that person.

Illustrative of the problems that arise because of the concept of limited peace officer status that is accorded to many officials is the recent and topical case of Collinson v. Ports Canada Corporation, an unreported case of the British Columbia Supreme Court in Chambers.[30] In that case, Ports Canada police officers attempted to arrest Mr. Collinson on an outstanding warrant. In a civil suit, McKenzie J. found that the officers were acting beyond their jurisdiction and therefore the arrest constituted an assault. The case must be examined by looking at the authority given to the Port Police under the Canada Ports Corporation Act. Section 5(1) reads:

> *"Any superior court judge ....may....appoint any person as a police constable for the enforcement of this Act and the by-laws and for the enforcement of the laws of Canada or any province in so far as the enforcement of such laws relates to the protection of property under the administration of the Corporation or a local port corporation or to the protection of persons present upon, or property situated upon, premises under the administration of the Corporation or a local port corporation, and for that purpose every such police constable is deemed to be a peace officer within the meaning of the Criminal Code and to possess jurisdiction as such upon property under the administration of the Corporation or a local port corporation and in any place not more than twenty-five miles distant from property under the administration of the Corporation or a local port corporation."*

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[28]. *Wright v. the Queen [1973] 6 W.W.R. 687 (Sask. D. C.). See also R. v. Presonka (1979) 4 W.C.B. 154 (Man. Co. Ct.) where it was held that there was no definition that equated "special constable" with "peace officer".*

[29]. *R v. ex rel. Reimer v. Ingram [1974] 5 W.W.R. 759, (Sask. C. A.).*

[30]. *File No. C871659, Vancouver Registry. Judgment delivered April 27, 1990. This case is under appeal to the B.C. Court of Appeal. It is not expected that it will be heard until the summer of 1991.*

McKenzie J. rejected the argument of defence counsel that the purpose of a bench warrant is for the protection of all persons including those on property under the jurisdiction of the Corporation. He found that the purpose of the Ports Police in enforcing the bench warrant was not to protect anybody but simply to arrest a person who had failed to show up for his trial. He found that the Port Police have

> *"a highly localized and circumscribed jurisdiction. Had they possessed the more plenary jurisdiction of a regular peace officer such as a member of the Vancouver city Police then their activities would have been appropriate and justified."*

There is no reason to consider that special constables would be treated any differently by the courts. The Alberta Court of Appeal in Regina v. Whiskeyjack and Whiskeyjack[31] recently considered whether a special constable appointed under s. 38 of the Police Act of Alberta was a peace officer for the purposes of Criminal Code provisions relating to "obstructing a peace officer" when he was enforcing sec. 97 of the Indian Act.[32] It was argued that enforcement of section 97 of the Indian Act did not involve the "preservation and maintenance of public peace" as required in the definition of "peace officer" in the Criminal Code. The Court of Appeal took a wide view of the meaning of "public peace" in accordance with R. v. Magee and held that a person who obstructs a special constable enforcing the Indian Act when that was his mandate can be convicted of obstructing a peace officer under the Criminal Code.

> *"Section 38 of the Police Act merely appoints Sanderson, who was a band constable, a special constable, that is, a peace officer for limited purposes."*[33]

In summary, the case law indicates that no assessment of status can be made without examining the legislation under which a special provincial constable was appointed, the terms of appointment and the job(s) that special provincial constable was hired to perform.[34] Part III of this report will discuss those aspects with respect to the some 400 special provincial constables in this province. Prior to that, however, two matters remain to be addressed. The first deals with legality and constitutional validity of limiting the powers of

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[31]. *(1984) 17 C.C.C. (3d), (Alta. C. A.).*

[32]. *Two issues were considered in that case. The other was whether the province of Alberta had the constitutional authority to appoint a constable to enforce federal legislation. This issue is addressed below.*

[33]. *At 262.*

[34]. *Other cases reinforce that there is no "magic" in a special constable appointment per se. See for example, R. v. Moore (1983) 10 W.C.B. 32 (Man Co. Ct.) and R. v. Presonka (1979) 4 W.C.B. 154 (Man. Co. Ct.).*

a constable or a peace officer. The second is a short discussion on the significance of peace officer status.

B. THE VALIDITY OF LIMITING PEACE OFFICER POWERS:

From time to time, arguments are advanced that "peace officer" status cannot be limited. These arguments have been implicitly or explicitly refuted by the case law discussed above. However, those arguments should be addressed because some people still maintain that peace officer status cannot be limited, either because of the historical "independence" of the office of "constable" or because it is unconstitutional for the province to limit status conferred under a federal statute, that is, the Criminal Code.

With respect to the "independent" nature of the office, the argument seems to be based upon both the common law jurisdiction of the constable and the "independence" of the office,[35] and on the long line of cases that have confirmed the principle that police officers are not "employees" of the municipality that appoints them;[36] that they are bound to act according to law and not to the directions of the municipality that pays them;[37] that they exercise an original, and not a delegated authority.[38]

It is true that the special constable in British Columbia swears an oath that is identical to that sworn by public police officers, swearing to "...cause the peace to be kept and preserved" and to "prevent all offenses against the persons and properties of Her Majesty's

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[35]. *For further discussion on the concept of a "constable" and its ramifications for modern police, see: Stenning, Philip C. The Legal Status of the Police, Law Reform Commission of Canada, 1982; Sorochan, Donald J., "The Independence, Accountability and Control of the Police", unpublished paper prepared for The Society for the Reform of the Criminal Law; and Guth, DeLloyd J. and Vogel, Richard H., "The Canadian Constable: An Endangered Species?", unpublished paper, date unknown. The latter papers are on file with the offices of the B.C. Police Commission.*

[36]. *Bruton v. Regina City Policeman's Association [1945] 2 W.W.R. 273, [1945] 3 D.L.R. 437; R. v. Labour Relations Board (Nova Scotia) [1951] 3 D.L.R. 1227, (N.S.C.A.); Re St. Catherine's Police Association, (1970) 15 D.L.R. (3d) 533; Queen v. Labour Relations Board, Ex. P. City of Fredericton (1955) 38 M.P.R. 26 (N.B.Q.B.D.)*

[37]. *Ex parte Wilson (R. v. Kay) (1908) 39 N.B.R. 124, 15 C.C.C. 264, (N.B.C.A.); C.U.P.E. v. Parkdale Village Commissioner of Police (1973) 4 Nfld. & P.E.I.R. 372. 39 D.L.R. (3d) 283 (P.E.I.S.C.).*

[38]. *A.G. New South Wales v. Perpetual Trustee [1955] A.C. 457.*

subjects..."[39] However, the case law seems to have obliterated any real significance to the term "constable" or the oath that is sworn by the constable. It has been said that the police in Canada today are entirely the creatures of statute, and have no status independently of such statutes.[40] This is no less true with special constables.

Further, the line of cases that confirms the independent nature of the "office" held by police officers, does not infer that the powers of a police constable cannot be limited. These cases say that the constable is answerable to the law and not to his or her employer: This means that if the law provides that the powers are limited, the constable is bound by that limitation. There is a significant difference between the situation where an employer of a constable attempts to restrict powers given to that constable under legislation and the situation where the powers given to that constable are limited by legislation.[41]

The cases that state that a constable is not in a true employer-employee relationship with his or her employer are nonetheless important in discussing special constables since they indicate that the employer of a special constable[42] may not interfere with the enforcement of the law as assigned to the constable under statute. That limitation on the employer's authority will be important when devising a scheme of accountability.

The constitutional validity of the province limiting the powers given to a "peace officer" under the Criminal Code was questioned in a Saskatchewan case.[43] That case is of academic interest only since it has been effectively overruled by the appeal court of Saskatchewan,[44] but the following passage summarizes the argument:

"But it seems to me that to qualify as a peace officer within the meaning of

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[39]. *B.C. Reg. 113/76.*

[40]. *Stenning, op. cit., note 35, p. 65. Although Stenning's work specifically refrains from discussing "special" police, this comment applies with equal force to special constables.*

[41]. *Further, the cases indicate that even if a person is called a "constable", the court will examine the true functions of that person. Thus, there appears to be no "magic" in the title of constable.*

[42]. *The propriety of a special constable being privately employed was confirmed in Re Lamb [1927] 1 W.W.R. 432, 47 C.C.C. 277 (Man. K.B.) as well as a long line of "railway police cases"; See, eg. Nazarino v. C.P.R. (1908) 11 O.W.R. 662; Thomas v. C.P.R., Bush v. C.P.R. (1906) 14 O.L.R. 55 (C.A.).*

[43]. *R. v. Rodenbusch, [1980] 3 W.W.R. 756 (Sask. D.C.).*

[44]. *R. v. Rutt, op. cit. See also, Stenning, Philip C., Legal Status of the Police, Law Reform Commission Study Paper, 1981, p. 98.*

para (c) of the Criminal Code definition he must be employed for the preservation and maintenance of the public peace, without qualifying words which may have the effect of altering the definition. The federal Parliament has the exclusive constitutional power to determine criminal offenses. In making their meaning more certain Parliament may define their terms. Such a definition thereupon becomes an integral part of the offence. In addition to this, once a person is found to be a peace officer within the meaning of the definition it seems to be inescapable that he becomes a peace officer for all purposes where the term is used in the Code (which would include even making breath sample demands under s. 235). I can appreciate that Parliament could limit the application of the definition by legislation at will. Also the province could appoint a wildlife officer a peace officer in the unlimited sense and then limit his use of those powers by contract under pain of reprimand or dismissal. But can a province legislate such a limitation without in effect legislating an unconstitutional restriction upon the Criminal Code definition?"[45]

That case has not been followed. Cases decided subsequent to it have confirmed the propriety of the province placing limits on the authority of persons appointed pursuant to provincial legislation. In a related matter, the Alberta Court of Appeal confirmed that a special provincial constable is a peace officer for the purposes of enforcing a federal statute, the Indian Act. The reasoning of the court is important, because it held that the appointment of constables was part of the practice of provincial prosecution of offenses which was continued into confederation under the provisions of the *Alberta Act, 1905*[46] and that practice had not be abolished by subsequent legislation. The court found that there was concurrent jurisdiction between the province and the federal government to enforce the provisions of the Indian Act. The Court found no difficulty in approving of the limits on the constable's authority, stating:

"His jurisdiction and powers were set out in his appointment. In limiting his powers to those specified in his appointment, which included the power to enforce s. 97 of the Indian Act, the province was not legislating his powers but limiting the powers that would otherwise be accorded a peace officer by virtue of s.2 of the Code and s. 16(1) of the Alberta Act, 1905. If he is a peace officer under s. 2 of the Code then his power is derived from s. 15(1) of the Alberta Act, 1905 as that power is limited by the definition of "peace officer" in the Code."[47]

And further:

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[45]. *R. v. Rodenbusch, op. cit. at 762.*

[46]. *R.S.C. 1970, App. II, No. 19.*

[47]. *At p. 260.*

> *"A special constable under the Police Act is a peace officer for the purposes limited by his appointment. The limitation in this case deprives him of power generally accorded a person falling within the definition of a peace officer in s. 2 of the Criminal Code."*[48]

The courts therefore have found that the province does indeed have the authority to limit the powers of a "peace officer" appointed by it. The limitation of powers will be found to be within the province's responsibility for the "administration of justice" under the British North America Act and section 8 of the Constitution Act.[49] The point has not been expressly decided by the Supreme Court of Canada[50] but the appeal courts of Saskatchewan[51] and Alberta[52] have confirmed the constitutional authority of the province to limit the powers of peace officers.

C. POWERS AND DUTIES OF A PEACE OFFICER:

Peace officer status is commonly perceived to give a person far greater powers and protection than the ordinary citizen. In practice, it is doubtlessly true that public police officers do wield far greater powers in terms of search, seizure, detention and use of force, than does the ordinary citizen. It is interesting to examine the legal authority by which those powers have been granted to peace officers. In some cases, there is nothing to prevent the use of similar powers by persons who are not peace officers: In other cases, peace officer status is fundamental.

Generally, peace officer status is considered to significantly enhance the power of an individual to do certain acts. The usual purposes for which peace officer status is

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48. *At p. 262.*

49. *See Whiskeyjack v. Whiskeyjack, op. cit.*

50. *But see Di Iorio and Fontaine v. Warden of the Common Jail of Montreal and Burnet et al. (1976) 33 C.C.C. (2d) 289 (S.C.C.)*

51. *R. v. Rutt, op. cit.*

52. *Whiskeyjack v. Whiskeyjack, op. cit.*

considered necessary are:[53]

1. To effect search and seizure;

2. To effect arrest and detention;

3. To authorize the use of force, including a firearm against a person, and to protect the officer from liability if force is used;

4. To allow the possession of a restricted or prohibited weapon;

5. To allow greater powers of investigation including the use of wiretap and the sharing of intelligence information with police agencies;

6. To protect the person with such status by an array of criminal offenses that protect peace officers in the execution of their duty;

7. To present to the public and to other police agencies an image of credibility and heightened status.

1. Search and Seizure.

Whether a special constable will have the power of search and seizure will depend upon the terms of his or her appointment and the functions which he or she was hired to perform. A vast number of provincial statutes authorize the searching of vehicles or other places, generally not including private residences, and whether a special constable will be authorized under these provisions will depend on both the wording of the statute and whether the provincial statute is listed on the appointment.

Peace officer status is rarely necessary to obtain a search warrant. A survey of the provincial statutes shows that search warrants may be obtained by "inspectors"[54], "investigators"[55], "directors or authorized representatives"[56], "conservation officers"[57] or "any person named"[58]. The Offence Act provides for the issuance of a search warrant to "a

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[53]. *Obviously, the scope of this paper does not allow for a full examination of each of these powers. What follows is a broad overview of the provisions for the purposes of illustration.*

[54]. *Fish Inspection Act, R.S.B.C. 1979, C. 136, S. 8.*

[55]. *Consumer Protection Act, R.S.B.C. 1979, c. 64, s. 48.*

[56]. *Employment Standards Act, R.S.B.C. 1979, c. 10, s. 21.*

[57]. *Environment Management Act, R.S.B.C. 1979, c. 14, s. 9.*

[58]. *Dentists Act, R.S.B.C. 1979, C. 92, s. 40.1.*

person named in it or a peace officer."[59]

The Criminal Code provides that a justice may issue a search warrant authorizing "a person named therein or a peace officer" to search a building, receptacle or place and seize anything that relates in the required manner to criminal activity.[60] There is no requirement that the search warrant be directed to a peace officer.

Although peace officer status is not necessary to obtain a search warrant, one advantage of peace officer status is that a warrant can be directed to "peace officers" in general and enforced by special constables without a specific person being named in the warrant.[61] One case, however, has upheld the exercise of a search warrant directed to "peace officers" by a game warden who was given under statute "all the powers, authorities and immunities of a peace officer",[62] so even this advantage may be illusory.

Despite the fact that peace officer status may not have any significant legal advantage in obtaining a search warrant under provincial legislation or the Criminal Code,[63] it has been noted that

> *"The discretionary nature of the power to issue such warrants, however, has in practice resulted in few of them being issued to persons who are not peace officers."*[64]

The Criminal Code provides for the seizure of weapons without warrant in section 101. Conservation officers find their peace officer status particularly useful for the purposes of

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[59]. *R.S.B.C. 1979, c. 305, s. 17.*

[60]. *See Criminal Code, s. 487.*

[61]. *This advantage was one mentioned by Kesley Merry, who supervises the special constables employed by I.C.B.C. He also stated, however, that in almost all cases I.C.B.C. employees would not enforce a search warrant without being accompanied by members of the public police. (Telephone conversation, February 7, 1991.)*

[62]. *R. v. Rushton, (1981), 62 C.C.C. (2d) 403. (N.B.C.A.)*

[63]. *The search provisions contained in the Narcotic Control Act and the Food and Drugs Act provide that the warrant must be issued to a peace officer. Since it would be rare for a special constable to be given the authority to enforce either of these statutes, a special constable would not be considered a peace officer under these provisions.*

[64]. *Stenning, Philip C., Postal Security and Mail Opening: A Review of the Law, University of Toronto Centre of Criminology, p. 106.*

this section.[65]

Few provincial statutes allow searches without warrant. The provisions of the Liquor Control and Licensing Act refer to "peace officers" in the liquor seizing provisions, but by implication contemplate only a municipal police officer or member of the R.C.M.P. being included as peace officers.[66]

2. Arrest and detention

As with search and seizure, whether a special constable is given the powers of a peace officer to arrest and detain a person will depend upon the authority he or she is given by the appointment and under the statute authorizing the arrest as well as the scope of the duties for which the special constable status was obtained. If the arrest comes within the authority given to the special constable, the Offence Act arrest provisions, which refer to peace officers[67], could be used for provincial offenses covered by that Act. Section 24 of the Mental Health Act allows a "police officer or constable" to take a person into custody for his own protection.[68] On the other hand, the arrest provisions of the Motor Vehicle Act and the Commercial Transport Act would not allow arrest by special constables since they contemplate only municipal or R.C.M.P. officers.[69] Conservation officers are given the power of arrest under the Firearm Act.[70] That power does not relate to special constable or peace officer status.

Peace officers may arrest without warrant under Section 494 or 495 of the Criminal Code. The provisions of 494 are also available to any person, but if a citizen makes an arrest he or

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[65]. *Telephone conversation, Ralf Aldrich, January 16, 1991.*

[66]. *R.S.B.C. 1979, c. 237, S. 69 and 71. Section 71 mandates the "chief constable" or the officer in charge of the detachment to report seizures of liquor.*

[67]. *R.S.B.C. 1979, c. 305, s. 17.*

[68]. *R.S.B.C. 1979, c. 256. The person must be "taken immediately to a physician."*

[69]. *Section 72 of the Motor vehicle Act (R.S.B.C. 1979, c. 288) refers to "every officer or constable of the R.C.M.P. or of the police force of a municipality"; Section 16 of the Commercial Transport Act R.S.B.C. 1979, c. 55 contains similar wording.*

[70]. *R.S.B.C. 1979., c. 134, s. 6.*

she is required to deliver the arrestee to a peace officer "forthwith". The provisions of section 495 apply only to peace officers. Its provisions are wider than section 494 in several respects, the most important being that a peace officer may arrest a person if he or she believes on reasonable grounds that an indictable offence has been committed, whereas section 494 requires that the person be found committing the offence.[71].

Under the Criminal Code, a summons must be served by a peace officer (section 509(2)) and a warrant of arrest must be executed by a peace officer (section 513).

3. Use of Force:

Sections 25 of the Criminal Code authorizes the use of force to aid in the administration or enforcement of the law. Its provisions are applicable to all persons. One case has stated that section will not protect officers enforcing provincial statutes, especially where no charges were laid.[72] In that case, the plaintiff was arrested under provisions similar to those contained in our provincial liquor legislation, for being in a state of intoxication in a public place. No charges were in fact laid, so the court's ruling that protection was not available in the enforcement of provincial statutes in general may be taken to be dicta. However, the case indicates that the protection of section 25 may not always be available to special provincial constables and is important for that reason.

Criminal Code section 25(4) gives peace officers, in addition to the powers given to all persons, a power to use "as much force as necessary to prevent the escape by flight" in effecting the arrest of persons in certain circumstances. The terms of subsection 25(4) are restricted and few categories of special constables carry firearms, but it is still an important

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[71]. *Note, however, that the provisions of section 495(1) are modified by 494(2) which prohibits arrest of a person for less serious types of crime unless certain conditions are fulfilled (i.e. that the arrest is necessary to prevent the continuation or repetition of the offence, or to secure the person's attendance at court). An interesting comment about the difference, in practice, between the arrest powers of section 494 and 495 appears in Shearing, C.D., Stenning, P.C. and Addario, S.M., "Police Perceptions of Private Security" in 9 Canadian Police College Journal (1985), p. 127 at 139. The authors discuss the arrest powers of private security guards and state:*

> *"Because of their routine access to private property, and often to extensive surveillance equipment, it may often be just as easy for private security personnel to "find [someone] committing" an indictable offence as it is for the police to acquire reasonable and probable grounds to believe that a person has committed such an offence."*

[72]. *Rumsey v. R. [1984] 5 W.W.R. 585, (Fed. T.D.).*

subsection. The provisions of subsection 25(4) have been modified by provincial regulation applicable to the municipal police forces, and more will be said about the use of firearms below.

Section 27 of the Criminal Code gives to all persons the right the use force to prevent the commission of certain crimes. Its provisions apply to all persons.

4. Possession of Restricted and Prohibited Weapons:

The provisions of the Criminal Code do not give a peace officer the unfettered right to carry a weapon. Section 92(1) of the Criminal Code provides:

> *"Notwithstanding anything in this Act,*
>
> ...
>
> *(b) a peace officer or public officer of a class from time to time prescribed by the regulations for the purposes of this Part,*
>
> ...
>
> *is not guilty of an offence under this Act by reason only that, in the case of a person described in any of paragraphs (a) to (c), he has in his possession a restricted or prohibited weapon for the purpose of his duties or employment...."*

This exemption from the "gun control laws" is dependent on three things: First, the person must come within the definition of "peace officer" or "public officer" set out in the Code; second, the peace officer or public officer must be of a class set out in the regulations (conservation officers have been so designated); and third, the peace officer or public officer must require the weapon for the purpose of his duties or employment.

5. Greater Powers of Investigation:

There is nothing in the Canadian Police Information Centre (C.P.I.C.) rules and regulations that requires a person be a peace officer for the purposes of sharing information under that organization. The C.P.I.C. rules contemplate full access by an "accredited police agency" and secondary access and privilege for other approved agencies. Conservation officer services, B. C. Transit Security, Co-Ordinated Law Enforcement Unit and the Special

Investigation Unit of I.C.B.C. have all obtained approval as "Category II" agencies.[73] Those agencies all have employees with special constable status, but the B.C. Police Commission, Family and Children's Services of the Ministry of Social Services and Housing and the Motor Vehicle Department of the Ministry of Transport and Highways all have comparable access without any persons from those agencies having been appointed as special constables.[74]

The Canadian Security Intelligence Service Act[75] states that information may be dispersed under that Act to a peace officer having jurisdiction to investigate an alleged contravention and to the Attorney General of a province. Therefore, a special constable having the authority to investigate a matter would probably be entitled to receive information relating to that matter from C.S.I.S. It must be emphasised that the status as special constable is insufficient to entitle that constable to receive information: The jurisdiction of the special constable must also be ascertained.

Peace officer status is not necessary to receive information covered by the federal and provincial privacy acts. Both acts prohibit the disclosure of personal information except in limited circumstances, but the agency to which the information is released is important, peace officer status is not.

The federal Privacy Act[76] reads in part:

> *8(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed*
>
> *(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada of a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed."*
>
> *f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province....for the purpose of administering or enforcing any law or carrying out a lawful investigation."*

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73. *C.P.I.C.-RM, pp. I-2-6 and Appendix I-2-B.*

74. *Ibid.*

75. *S.C. 1984 c. 21, s. 19.*

76. *S.C. 1980-81-82, c. lll, Schedule II.*

The British Columbia Privacy Act [77] authorizes the release of information to a peace officer but also to a "public officer". It reads in part:

> *"An act or conduct is not a violation of privacy where*
> *(d) the act or conduct was that of*
>
> > *i. a peace officer acting in the course of his duty to prevent, discover or investigate crime or to discover or apprehend the perpetrators of a crime; or*
> >
> > *ii. a public officer engaged in an investigation in the course of his duty under a law in force in the Province."*

Because of the proliferation of agencies in the United States, each of which would have its own rules as to the release of information, no opinion can be expressed about the relevance of peace officer status in relation to the release of information from other countries. Persons with peace officer status do state, however, that receiving intelligence information from police organizations is easier if that organization perceives the person as a police officer and that this is especially true with agencies from the United States.

The wiretap provisions of the Criminal Code allow an authorization to be based on an affidavit of either a "peace officer" or "public officer". A "public officer" would include certain federal government employees but not provincial government employees. Peace officer status would theoretically assist a person to obtain a wiretap authorization, but it is hard to think of a realistic case where the mandate of a special constable would place him or her in the legal position to request one. It has been suggested that peace officer status is required by the persons who intercept communications in accordance with the authorization, but there is nothing in the provisions of the Criminal Code to indicate that this is so.

6. Greater Protection:

The Criminal Code provides a number of offenses that make certain actions more serious because the victim is a peace officer. Obstructing or assaulting a peace officer in the execution of his or her duty are the primary ones. Many cases have held that the protection afforded by these sections are available to any person with peace officer status, if they are acting within their lawful powers. Certain constitutional challenges have been raised where the peace officer is also given similar protection under the provincial statute he is enforcing.

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[77]. *R.S.B.C. 1979, c. 336.*

Courts have held that there can be an overlapping jurisdiction in such matters.[78]

7. Ticketing and swearing informations:

The Offence Act[79] provides for the laying of informations and issuance of summonses by means of tickets issued by "enforcement officers" designated under regulation.[80] The Regulation designating "enforcement officers" includes "special constables" in the definition of "police officers" and gives police officers authority to issue violation tickets or appearance notices for most acts covered by the Regulation. In addition, park rangers, conservation officers, deputy conservation officers, wildlife officers, railway constables and twelve other categories of persons are separately designated as enforcement officers for certain purposes. Finally, employees of certain companies and certain named individuals are made enforcement officers to issue violation tickets or appearance notices under certain sections of the Motor Vehicle Act.[81]

Informations under the Criminal Code can be sworn by any person.[82]

8. Perception of Status:

The public in general and other police agencies, especially those from other countries, tend to give peace officers added authority simply by virtue of perceiving them as having a significantly greater status, even if increased status is not always accorded to the individual by law. While this perception of status can sometimes aid in law enforcement, it can also provide problems in law enforcement if a person with very limited powers were perceived as having full status. The perception of status should be factored into any decisions made with regard to accountability of special constables.

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78. *R. v. Robar (1980) 43 N.S.R. (2d) 17 (N.S.C.A.)*

79. *R.S.B.C. 1979, C. 305 (as amended), s. 1 and s. 121.1.*

80. *The Offence Act formerly required that peace officers signed tickets. This was amended in 1986.*

81. *Violation Ticket Administration Regulation, B.C. Reg 423/90.*

82. *R. v. Schwerdt, (1957) 23 W.W.R 374, 27 C.R. 35, 119 C.C.C. 81 (B.C.S.C.).*

9. Summary:

Peace officer status has benefits, some more illusory than real. Peace officer status is often not that significant in terms of increasing the powers given to a person. When one combines that knowledge with the fact that peace officer status is accorded to special constables only in certain circumstances, one can easily see that the status of a special provincial constable is not significantly greater, if it is greater at all, than that of many public officers.

Before a scheme of accountability can be designed, it is necessary to examine the appointment of special provincial constables in this province and describe the current manner in which special provincial constables in British Columbia are held accountable for their actions. That examination will form the next part of the report.

PART III: THE SPECIAL PROVINCIAL CONSTABLE IN BRITISH COLUMBIA.

A. Legislative History of the Appointment:

The appointment of special provincial constables is not a new phenomenon. In fact, as far back as 1880, An Act respecting Police Constables[83] provided for the appointment of both provincial constables and special constables. The provision in that Act can be traced through to Section 9 of the current Police Act.

As found in 1948 and 1960 legislation, the appointment of special constables could be made by the Commissioner of the provincial police force for a time not exceeding six months to "assist the force in the execution of its duties". Additionally, a Justice of the Peace could appoint a special constable, in the absence of a regular constable, for "any specific duty", and a government agent or two justices of the peace could appoint special constables when the "ordinary officers appointed for preserving the peace [were] insufficient" (sic).[84] These latter provisions are almost identical to those contained in the 1880 legislation.

The original Police Act of British Columbia, enacted in 1974,[85] provided that special provincial constables could be appointed by the commissioner of the provincial police force (which, by contract, is the R.C.M.P.) or by a judge of the Provincial Court of British Columbia.

The 1974 Act clearly contemplated the appointment of such constables when necessary to assist the provincial force. Section 14 provided as follows:

> *14(1) Where the commissioner [of the provincial police force] is of the opinion that the provincial force requires assistance in the performance of one or more of its duties and functions, he may appoint such persons as he considers suitable as special provincial constables.*
>
> *(2) Where a Judge of the Provincial Court of British Columbia*

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83. 43 Vict. Ch. 22. This Act contained four sections. Section 4 is clearly the predecessor to the current provision under which appointments are made. It provided for the appointment of a special constable for "any specific duty" or when the ordinary officers appointed for preserving the peace were insufficient for the preservation of the peace and for the protection of property and whenever "any riot or felony has taken place or may be apprehended".

84. R.S.B.C. 1948, c. 255, s. 8; R.S.B.C. 1960, c. 288, s. 8.

85. S.B.C. 1974, c. 64.

(a) is of the opinion that the number of provincial constables is insufficient for the purposes of preserving peace or protecting property within the regional district in which the judge usually sits; or

(b) is satisfied, upon oath of a responsible person, that a riot or indictable offence has taken place or is about to take place,

he may appoint such persons as he considers suitable to be special provincial constables.

(3) a special provincial constable appointed under subsection (1) or (2) shall be paid such remuneration as may be prescribed in the regulations and shall be appointed for such term, not exceeding one year, as the commissioner or judge may specify in the appointment.

(4) Subject to such restrictions as the commissioner or judge may specify in the appointment, a special provincial constable has the powers, duties and immunities of a provincial constable; but no special provincial constable shall serve or execute a process of civil nature.

Section 15 of the Police Act specifically made the duties and the jurisdiction of a special provincial constable subject to the direction of the commissioner of the R.C.M.P.[86] Section 53(1) made the province "jointly and severally liable" for the torts of special provincial constables as well as provincial constables "in the performance of their duties".[87] Further indication of the subordinate nature of both these positions is found in B.C. Reg. 671/76, which provides that the supervision of special provincial constables in both non-emergency and emergency situations is to be undertaken by the commissioner of the provincial police force or the commander of the R.C.M.P. "E" Division in the Province.[88]

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[86]. *Section 15(1) read as follows:*
"Subject to the regulations and the direction of the commissioner, a provincial constable and a special provincial constable has, while carrying out the duties of his appointment, jurisdiction throughout the Province to exercise and carry out the powers, duties, privileged, and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under any Act or regulation."

[87]. *Also noteworthy is section 6 of the current Police Act, which provides as follows:*
6(1) The Public Service Act does not apply to the provincial police force, a provincial constable, an auxiliary constable, a special provincial constable or an employee of the provincial police force. (Emphasis added.)

[88]. *"6. A special provincial constable or a special municipal constable may exercise his powers as a police constable only*

(a) under the supervision of or on the instructions of a regular member of a provincial force or a municipal force; or
(b) in accordance with regulations and rules made under this Act or the Emergency Programme Act, but in an emergency he shall exercise his powers in accordance with the regulations, orders, and directions of the officer-in-charge."

"officer-in-charge" is defined to mean the commissioner of the Provincial Police Force appointed under the Police Act, or where an agreement under section 16 of the Act (old section) has been made, the officer

In practice, special constable[89] appointments appear to have been made by the R.C.M.P. even where such appointments did not appear to be of immediate assistance to the force. Security guards at Alcan, for example, have been appointed special constables since the late 1940's. These appointments appear to have originated because the provincial police force did not have the manpower to handle the policing of Kitimat when the townsite was originally opened. The commanding officer of "E" Division continued to make such appointments after the R.C.M.P. took over the duties of the provincial police force and the Solicitor General continued to make the appointments after the legislation was changed. The appointments appear to continue out of habit.

The power to make special provincial constable appointments was taken from the hands of the commissioner of the R.C.M.P. and placed in those of the minister in 1985.[90] Whether this change was in response to reluctance on the part of the R.C.M.P. to continue to make such appointments is not clear. Certainly the R.C.M.P. questioned their authority to do so. A letter from the Assistant Commissioner, E. Division, in November of 1983 stated that

> *"...the Commanding Officer (RCMP) of this province has questioned his authority to make further appointments of Special Provincial Constables pursuant to Section 14 of the Police Act of B.C. under these circumstances [where the Canadian Coast Guard wished to have one of its members designated as a special provincial constable]. It is our view that this authority was invested in the CO more so for the purpose of appointing additional manpower in times of emergency or other unnatural situations."*[91]

In 1985 section 14 was amended by deleting the requirement that appointments be made to assist the provincial police force and by providing that the "minister" rather than the "commissioner" could make such appointments. The provision that special provincial constables were under the direction of the commissioner was also deleted. These changes were approved without comment by the legislature on June 25, 1985.[92] What seemed on the

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commanding the Royal Canadian Mounted Police "E" Division in the Province.

[89]. *In this section, "special constable" and "special provincial constable" mean the same.*

[90]. *The Miscellaneous Statutes Amendment (No. 2) Act, 1985, S.B.C. 1985, c. 51. The power of a provincial court judge to make such appointments was removed by legislation in 1988.*

[91]. *Letter dated November 1, 1983 from D. K. Wilson, Assistant Commissioner, E. Division, R.C.M.P. to Captain P.M.H. Golden, Regional Manager, Canadian Coast Guard. (Copy of letter on file with the B.C. Police Commission).*

[92]. *Hansard, June 25, 1985.*

face to be mere housekeeping changes in fact changed the very nature of the appointments. Where previous appointments were required to be made to assist the provincial force in the performance of its duties, and such appointees were subject to the control and direction of the commissioner of the R.C.M.P. (in his role as the commissioner of the provincial force) there were now no legislative guidelines as to the reasons for why such appointments should be made and the new appointees became autonomous and unsupervised.[93]

Special provincial constable appointments are now viewed by the Government as a useful method to expand the powers of certain persons who are performing quasi-police work or who might, through the nature of their jobs, encounter criminal activity in an area where a police officer might not be readily available.

B. Special Provincial Constables in British Columbia:

1. Who are they?

There are now approximately 400 autonomous special provincial constables in the province. The employers of these special provincial constables include private corporations, several crown corporations and diverse departments of government. As of March, 1990, the following corporations or departments of government employed special provincial constables:

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[93]. *In fairness, it should be recognized that even though such appointments were made by the commissioner until 1985, many such appointments (such as those for Alcan) were in fact autonomous appointments. It could be supposed that the difficulty of the Commissioner of the R.C.M.P. exercising any real control over such appointments was one reason for that organization wishing not to make further appointments. This is mere speculation, however.*

Name of Organization	Number of Special Constables
Alcan Smelters & Chemicals Ltd.	19
B.C. Transit Security Services[94]	33
Canadian National Railway[95]	24
Canadian Pacific Railway	34
C.L.E.U.	9
Council of Forest Industries	1
Ministry of Environment	122
Finance and Corporate Relations	10
B.C. Securities Commission	11
Hospital Security	24
Insurance Corporation of B.C.	25
Nanaimo Harbour Commission	3
Public Gaming Branch	6
R.C.M.P. (Exhibit Custodians and Storespersons)	26
Security Programs	7
Sergeant at Arms Staff	19
University Endowment Lands	1

Each of the above employers has unique reasons for desiring their employees to have special provincial constable status. Although inquiry into those reasons and the validity of them was considered to be outside the mandate of this report[96], selected appointments were examined for illustration and discussion.

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[94]. *Members of B.C. Transit Security may hold dual appointments as constables under the Railway Act (R.S.B.C. 1979, c. 354) and as special constables under the Police Act. The sections of the Railway Act that pertain to the appointment and powers of railway constables have been declared to be applicable to B.C. Transit with respect to its advanced light Rapid Tansit Systems by certificate No. 4752, issued September 13, 1984 pursuant to Ss 3(2) of the Railway Act. Inquiries were not made as to whether such appointments had in fact been made, but the power to make them is there.*

[95]. *It is noteworthy that both the provincial Railway Act (R.S.B.C.) 1979, C. 354 and the federal Railway Act (R.S.C. 1980, c. R-3) provide for the appointment of railway constables. Both railway acts restrict the territorial jurisdiction to within one quarter mile of the railway. Presumably, C.N. and C.P. Rail preferred their constables to have no such territorial limit to their powers and sought additional appointments under the Police Act. No employee of B.C. Rail, however, appears to have received an appointment under the Police Act.*

[96]. *An examination of this topic was designated to Police Services Branch, as stated in the introduction.*

2. What are their powers?

As was discussed in Part II, the powers of a special provincial constables are primarily determined by reference to the legislation under which they have been created. In the case of special provincial constables, however, this is simply the beginning. The powers of all special provincial constables are not equal. Simply because a person has been appointed a special provincial constable does not necessarily mean that he has the same powers as another person who has been similarly appointed.

To determine the powers of any individual special provincial constable, reference must be made to four sources: First, the Police Act; second, regulations enacted under the Police Act; third, the appointment itself; fourth, the job description of the special provincial constable. These will be considered in turn.

(a) The Police Act

The two sections of the Police Act that govern the powers of special provincial constables are section 9 and 10, specifically, subsections 9(3) and 10(1).

> *9(3) "Subject to the restrictions the minister specifies in the appointment, a special provincial constable has the powers, duties and immunities of a provincial constable."*

This subsection dictates that the form of the appointment governs the powers, duties and immunities of a special constable. A discussion on the form of appointment follows. Subsection 10(1) reads as follows:

> *"Subject to the regulations, a provincial constable, an auxiliary constable or a special provincial constable has, while carrying out the duties of his appointment, jurisdiction throughout the Province to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under an enactment."*

By virtue of the agreement by this province to engage the R.C.M.P. to carry out powers and duties of the provincial police force, a provincial constable means a member of the

R.C.M.P.[97] This subsection contemplates that a regulation might affect the jurisdiction of a special constable.

(b) The Regulations:

No regulation to detract from the jurisdiction of special provincial constables has been enacted so the qualification contained in section 10 is not applicable.

Interestingly, although section 10 seems to contemplate that a regulation relating to the jurisdiction of special provincial constables could be enacted, the regulation-making power contained in section 74 of the Act does not contemplate further regulation in respect of special constables. The Police Act authorizes general regulations pertaining to "police forces"[98] and to "auxiliary constables"[99] but not to special constables.

(c) The Appointment

Section 9(3) makes the powers of a special provincial constable subject to the restrictions specified in the appointment. Because the form of appointment seems to vary considerably from agency to agency and has not remained constant, it is worthwhile to examine a selection of appointments.

Conservation officers employed by the Ministry of Environment have been appointed special constables. Conservation officers are given a great number of statutory powers as conservation officers. They are apparently appointed as special provincial constables so that they may serve warrants issued for legislation administered by the Ministry of the

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[97]. *To be technically correct, the situation is legislatively not that simple. The minister on behalf of the province may enter into agreements with the R.C.M.P. to carry out all or some of the powers and duties of the provincial police force. All provisions of the Act relating to the powers given to the provincial police force are given to the R.C.M.P. subject to the agreement between the province and the R.C.M.P. The Act allows the province to contract to the R.C.M.P. for only a portion of the responsibilities of the provincial police force and allows the Lieutenant Governor in Council to make the regulations necessary to authorize or require "a member of the public service of the Province to carry out the power or duty". (Section 14).*

[98]. *Ss. 74(c).*

[99]. *Ss. 74(l).*

Environment and seize firearms in accordance with the Criminal Code.[100] The conservation service provided two examples of appointments of special constables employed by it, one made under the old legislation and one made under the new.

One appointment dated January 10, 1989 for a conservation officer read as follows:

> *"...I appoint [name] as a special provincial constable in the Province of British Columbia, for a term of 35 months commending on [date] for duty as conservation officer with the Ministry of Environment and Parks to carry out the duties of a Peace Officer pursuant to Part II,I of the Criminal Code of Canada and Section 455.5, 456.2, 456.3, 629 and 661 of the Criminal Code.*

A later appointment, dated 1 January 1991, read as follows:

> *"...I appoint [name] as a special provincial constable in the Province of British Columbia, for a term of 12 months commencing on the [date] for the sole purpose of duties as a conservation officer with the ministry of Environment.*

In view of the reasons for requesting special constable status, it would seem that the former appointment is more sound. The problem with such an appointment is that the section numbers of the Criminal Code may change and this could result in an appointment of dubious effect. Indeed, the section numbers referred to in the 1989 appointment have been changed since that time.

B.C. Transit Security Services also employ a number of special provincial constables. Unlike the conservation officers, these security officers are given no enforcement powers under legislation. The granting of special constable status to these employees has resulted in a quasi-police force within B.C. Transit. An appointment for a B.C. Transit Security services special provincial constable dated January 1, 1986 reads as follows:

> *"...I appoint [name] as a special provincial constable, for a term of 3 years commencing on [date] for duty as a member of the B.C. Transit Security Services and for the purpose only of enforcing the following enactments:*
>
> ***Criminal Code of Canada***
> ***Liquor Control and Licensing Act***
> ***British Columbia Transit Act***
> ***Motor Vehicle Act***

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[100]. *Letter dated June 14, 1984 addressed to Mr. Robin Bourne, Assistant Deputy Minister, Police Services Branch from Allan Murray, Assistant Deputy Minister, Ministry of Environment. The letter also refers to "delivering court documents", but it is not clear which documents are referred to.*

any other provincial statutes.

A later appointment, dated December 8, 1989 read as follows:

> ***"...I appoint [name] as a special provincial constable for a term of [] commencing on [] for duties as a member of the B.C. Transit Security Services and for the purpose only of enforcing the following enactments:***
>
> ***Criminal Code of Canada***
> ***Liquor Control and Licensing Act***
> ***British Columbia Transit Act***
> ***Motor Vehicle Act***
> ***Offense (sic) Act***

The only difference between the two appointments is that the first is probably far wider than the second, since it is questionable whether the Offence Act can be "enforced" because it merely sets out enforcement procedures for other provincial statutes. Another problem with the appointment is that certain enforcement powers in the Motor Vehicle Act clearly contemplate only members of municipal or the provincial police force and it is doubtful that this appointment could override those provisions.[101]

The Insurance Corporation of British Columbia also employs a group of special constables. When appointments were first granted to that organization four and a half years ago, they were very general. They referred to the enforcement of the "Criminal Code and all provincial statutes". The newer ones that replaced those when they expired refer to the enforcement of

> *"...Criminal Code and all provincial statutes insofar as it is necessary for fraud and fraud-like offenses against I.C.B.C."*[102]

The form of this appointment is in keeping with the law as it relates to special constables but I.C.B.C. is not in agreement with its form.[103]

The final matter that must be determined in order to determine the extent of "peace officer" powers that are accorded to any individual special provincial constable is the matter of responsibilities and duties of that constable.

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[101]. *See, e.g. Motor Vehicle Act, R.S.B.C. 1979, c. 288, sec. 72.*

[102]. *Telephone conversation, Kesley Merry, February 8, 1991.*

[103]. *The I.C.B.C. appointment is clear on its face but is criticized by Kesley Merry who supervises the special constables employed by I.C.B.C.. According to him, such appointments are too specific and of questionable legality. (Telephone conversation, ibid.)*

(d) Responsibilities

The responsibilities of a special provincial constable must relate to the job that constable was hired to perform. In some cases, these responsibilities will be set out in manuals and job descriptions. In others, it may be more difficult to determine the actual responsibilities of the special constable.

To illustrate how a court might determine the responsibilities of a special constable, the B.C. Transit Security Services describes the responsibilities of the special provincial constables employed by it as follows:

> *"Provide initial response to all enforcement/investigative situations associated with B.C. Transit facilities, as operational demands allow.*
>
> *Provide complete enforcement/investigation of offences against the B.C. Transit Act and regulations.*
>
> *Provide complete investigation of all situations where civil liability may need to be established."*[104]

In spite of the fact that the form of appointment gives authority to members of B.C. Transit to enforce the Criminal Code, it is not likely that a court would find that a special constable employed by B.C. Transit would have peace officer status to arrest and detain a person for a Criminal Code offence that is not committed on or in relation to B.C. Transit facilities, because the appointment also refers to the constable's "duty as a member of the B.C. Transit Security Services". Certainly a special provincial constable employed by B.C. Transit on his or her way home from work would not be considered a peace officer under the Code if he/she pulled over a suspected impaired driver and demanded that the driver provide a sample of breath.

While it appears clear that the authority or power of a special provincial constable is limited, a more difficult issue is raised with respect to whether a special constable has any responsibility or duty to prevent crime or to prevent breaches of the peace that come to his or her attention outside of employment.[105] This difficulty arises because the Police Act states

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[104]. *Bourne, Robin, "Transit Police: Appreciation of the Situation", Discussion Draft dated March 31, 1990, at p. 5.*

[105]. *Sections 30 and 31 of the Criminal Code authorize but do not require action to prevent a breach of the peace. Section 30 applies to all persons, not simply peace officers. Section 69 of the Criminal Code places an affirmative duty on peace officers as follows:*

> *"A peace officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot is guilty of an*

that special constables, subject to restrictions on their appointment, have the duties and responsibilities of provincial constables. The form of the appointment could be read to limit the powers given to a special constable but it is uncertain if the form of appointment would be considered to also limit the duties and responsibilities. Certainly the oath that is sworn by the special constable would require him or her to act.

At one point, the provincial government took the position that the appointment as a special constable did involve such responsibilities. In 1986 the Ministry wrote to each special constable telling them that they had a duty to act in accordance with the oath they had taken.

> *"By implication this means that when an offence is committed in the presence of a Special Provincial Constable against public peace, or a citizen, whether it be under the Criminal Code of Canada, or a provincial statute, that the appointees will take steps to prevent continuation of the offence, and identify the suspect in order that the offence be prosecuted, in whatever jurisdiction the matter arose."*[106]

At least one group of special constables, those employed by the conservation service, has been informed that the letter of instructions that were sent out by letter in 1986 was rescinded. This rescission however, did not come from the Solicitor General but from their employer, who stated that:

> *"The appointments remain only for the purpose of delivering court documents, executing warrants issued for Ministry legislation and enforcing those sections of the Criminal Code dealing with weapon restriction directly related to the functions of a conservation officer.*
>
> ...
>
> *Conservation Officer Service members ....will invoke the authorities of a Special Provincial Constable only when they are required in connection with their functions as a conservation officer or if they are presented with no other choice and are required to cross into areas not covered by their appointment under Section 9 of the Environment Management Act."*[107]

To the extent that the letter purports to rescind the letter of instructions given to the constables by the government, it is of dubious legality in view of case law that does not

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indictable offence and is liable to imprisonment for two years."

[106]. *Form letter sent out under the signature of Richard M. Anthony, Special Advisor, Police Services, to all holder of appointments as special provincial constables, May 1986.*

[107]. *Letter from Ralf L. Aldrich, dated December 5, 1990 to Regional Directors and Regional Enforcement Managers.*

allow the employer to limit the duties assigned to a constable by law. However, the present state of the legislation and the case law would tend to support the instructions given to the conservation officers by Mr. Aldrich rather than the directive of Police Services Branch, since it can be inferred that if the peace officer power of the constable is limited to matters within his or her appointment and mandate, he or she cannot be required to act outside of it. However, the issue is not entirely clear and should be clarified legislatively.

3. Present scheme of accountability.

(a) The Appointment:

A government department, crown corporation or other company desirous of having an individual employed by it appointed as a special provincial constable makes written application to the Ministry of Solicitor General.[108] The criteria for making such appointments were as follows in 1987:

> *"1. Is the department or agency requesting the appointments engaged in the routine enforcement of a body of law, whether it be federal, provincial or municipal?*
>
> *2. While carrying out their duties associated with the enforcement of any rule of law, are they required to exercise any power or functions that are exclusively assigned to that of a peace officer, police officer or police constable under the statutes or bylaws they are enforcing?*
>
> *3. Have the individual applicants for appointment been properly trained as police officers or do they have similar experience from a related discipline?"*[109]

With regard to the latter criteria, the government appears to rely on the employer to ascertain that the person is qualified to be appointed. In 1985 the method used by the Ministry of the Solicitor General for ascertaining suitability for appointment was described as follows:

> *"In the situation where we have given appointments to the Sergeant-at-arms and his staff at the legislature, or the 120 some Conservation Officers, we simply ask that they submit their fingerprints and photographs for security clearances to the R.C.M.P. before such appointments are undertaken. There*

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[108]. *Until the ministries were split, the Ministry of Attorney General was responsible for the appointments.*

[109]. *Memo from Richard M. Anthony to Mr. Robin Bourne, A.D.M. Police Services Branch, dated 87-11-04.*

is an assumption that the administrators of the respective programs have taken the necessary precautions to ensure their candidates for appointment are suitable for the task."[110]

Upon appointment, the special provincial constable ascribes to an oath which is identical in all respects to that sworn by regular police officers.[111] He or she receives a form of appointment, an identification card, and sometimes a badge. The current practice is to make appointments for only a limited period of time, usually three years. Renewals must be reapplied for.

Once appointed, the ministry appears to give no guidelines to the special constable regarding how he or she represents himself or herself to the public. The "holding out" or the public perception of special provincial constables as police officers is one issue that has arisen in the past. There is no prohibition in our Police Act against special provincial constables calling themselves police officers.[112] Regulations enacted under the Private Investigators and Security Agencies Act[113] prohibit the wearing of uniforms, badges or logos resembling that of any police force by a "security employee"[114] but it is doubtful that any of the currently appointed special constables would be captured within the definition of "security employee" as contained in that Act.[115] Although an argument could be made to the contrary, it is not likely that a Court would find any of the groups of special provincial constables to be included in the definition of "security patrol". Therefore, there appears to be no legal

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[110]. *Letter from R. M. Anthony, special Advisor, Police Services Branch, addressed to Mr. George E.A. Reid, Chief Provincial Firearms Officer, Alberta Ministry of Solicitor General, dated January 30, 1985.*

[111]. *B.C. Reg. 113/76, s. 1.*

[112]*Such a provision may be found in the Police Act of at least one province in Canada.. See Alberta's Police Act, sec. 54. The Alberta Act makes a distinction between special constables and police officers.*

[113]. *R.S.B.C. 1980, c. 337.1.*

[114]. *B.C. Reg. 4/81. Private Investigators and Security Agencies (Ministerial) Regulation, section 8.*

[115]. *While the licensing provisions of that Act do not apply "to peace officers acting in the performance of their duties" nor to persons who are employed by an employer who is not a "security business" as defined in the Act, those categories of persons (as well as others) are not exempted from the entire Act. However, since "security employee" includes an "individual employed by or engaged in a security business", "security business" inter alia means the business carried on by a security patrol and "security patrol" means a person who, otherwise than as an alarm service, provides, conducts, supervises or inspects a guard patrol or watch of property or a service of responding to a security alarm special constables employed by a single employer to protect that employer's property would likely not be included.*

prohibition against special provincial constables wearing the accoutrements of a police officer.

(b) Training

The training of municipal police forces is governed by regulation.[116] This regulation applies specifically to municipal constables and not to special provincial constables.

The training of a special provincial constable is left to his or her employer and may be rigorous or non-existent. The police services branch may or may not be informed of the training that the special provincial constable has undergone.[117] Some special provincial constables are trained through an in-house training program. Some attend programs at the Justice Institute designed for enforcement officers other than public police officers, and some are partly trained in-house and partly by the Justice Institute. Some in fact may receive no training at all.

It is not known how many groups of special constables are carrying firearms. As for firearm training, there is no consistent standard.

(c) Supervision:

The Police Act provides that the police boards of the municipalities are responsible for the general oversight of the municipal police force.[118] The police chief has "general supervision and command" of the municipal police force under direction of the board. The municipal police force is to

> *"perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the regulations or under any Act."*

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[116]. *B.C. Reg. 109/81, entitled Rules Regarding Training, Certification and Registration of Municipal Constables Appointed under Section 22 of the Police Act.*

[117]. *Memo from Geoff Hutt to Robin Bourne dated 86-05-22, on file with office of B.C. Police Commission.*

[118]. *The board is responsible for appointing a chief constable and other constables, making rules respecting the operation of the police department and determining, in consultation with the chief constable, the priorities, goals and objectives of the municipal police force.*

The Police Commission acts in an advisory and oversight capacity to police boards by setting standards, receiving and reviewing rules made by police boards, acting as appellate body in both disciplinary matters and complaints and by conducting research projects.
The Act is silent about the supervision of special provincial constables. The Emergency Policing Regulation[119] deals with the supervision of both special provincial and special municipal constables in emergency and nonemergency situations. That regulation states that a special provincial constable may exercise his powers as a police constable only under the supervision or on the instructions of a regular member of the provincial force. This Regulation has not been repealed,[120] but its provisions are ignored for all practical purposes.

In practice, supervision of special provincial constables is left to the agencies that employ such constables. In some of these organizations a police-type hierarchy of special constables has emerged, but unlike municipal police forces, there is no legislative provision for any such organization nor is it guided by a police board. The responsibilities of the police commission in regards to such a "force" are uncertain and incomplete.[121]

(d) Possession of Weapons:

Peace officers and public officers "of a class from time to time prescribed in the regulations" who have in their possession a restricted or prohibited weapon for the purpose of their duties or employment are exempted from the requirements of the Criminal Code as they relate to the possession and registration of restricted weapons. Conservation officers have been included in the class of peace officers and public officers prescribed by legislation and they all carry weapons. The conservation service provided copies of extracts from their procedure manual that relate to training, issuance, storage and conditions for use of firearms

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[119]. *B.C. Reg. 671/76.*

[120] . *An argument could be made that because of the repeal and re-enactment of the Police Act that supervision by the provincial force is inconsistent with the new Act. (Interpretation Act).*

[121]. *The matter of the Police commission's involvement in complaints is dealt with below. There is no provision for the rules of these groups of special provincial constables to be filed with the Police Commission, as there is for municipal Police departments, and there is no provision for the consultation and "giving advice" as there is with municipal police boards. However, the provisions of section 45 and 46, respecting inquiries and special investigations are probably wide enough to cover an inquiry into or investigation of a group of special provincial constables.*

and ammunition.[122] These extracts contain considerable detail. All use of firearms must be reported, and there is provision for a provincial review board where such use results in injury or death to a person. To suggest that there is no accountability mechanism in place for the possession and use of firearms by special constables is, therefore, quite inaccurate. Such accountability rests with the employer and can be quite onerous. What is lacking is a universal legislated standard of accountability such as applies to the municipal police forces.

Members of the municipal police forces are restricted by internal procedural rules as well as by regulation in their use of firearms.[123] Where the public police are concerned, there is a dual purpose in legislating such matters as firearm use and not leaving the matter solely to internal policy: First, a minimum consistent standard is set. All departments must comply, and while internal rules may be more restrictive than the legislation they cannot be more permissive; second, a legislated standard is open for inspection and presumably ensures that the public interest is represented.

(e) Complaints against Special Provincial Constables.

The provisions in the Police Act and the Police (Discipline) Regulation that deal with complaints against special provincial constables are probably unenforceable. Although the provisions purport to deal with special provincial constables, they are poorly thought out and poorly drafted. It is useful to set out the present scheme.

In the bulk of the Police Act, the term "provincial constable" does not include a "special provincial constable", but does include a member of the R.C.M.P. in its role as provincial police force.[124] However, in Part 9 of the Act, the part dealing with citizen complaints, the term "provincial constable" does include a special provincial constable and does not include a member of the R.C.M.P.

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[122]. *Volume 5, section 1, subsections 7.01, 7.03, 7.05, 8.01.*

[123]. *See B.C. Reg. 602/77.*

[124]. *This is by virtue of the definition in section 1 and the combined effect of section 5 and 14.*

In part 9, a "complaint" is defined as follows:

> *"complaint" means an allegation in writing made by a member of the public respecting the conduct of a municipal constable or a provincial constable which, if proven, would constitute a disciplinary default under a code of conduct established by regulation.*

The only code of conduct established by regulation under the Police Act is Appendix A of the Police (Discipline) Regulation[125]. The disciplinary proceedings of that regulation apply only to municipal police forces. Appendix A begins with the following words:

> *"Any member of a municipal force commits a disciplinary default if he engages in any one or more of the following".*

Furthermore, the content of the Discipline Code set out in Appendix A very clearly contemplates members of "police forces" and not special provincial constables. A court would have no difficulty in finding the provisions of the Police Act as they relate to special provincial constables void and unenforceable because of the lack of definition of the word "complaint" as it applies to them. However, because the complaints mechanism purports to deal with special provincial constables, it is worthwhile to set out the gist of the contemplated scheme.

The Act states that complaints against special provincial constables may be made to the complaint commissioner or the "disciplinary authority".[126] The "disciplinary authority" for a special provincial constable is designated as the commissioner of the provincial police force (which is the R.C.M.P. under contract) provincial police force the commissioner appoints in writing.[127] The commissioner is to record the complaint, the complainant is to receive a copy of the complaint and the prescribed statement of procedures, and the complaint commissioner is to receive a copy of the complaint. Status reports are to be given at prescribed intervals in the same manner as for a member of a municipal police force.

If the complaint cannot be informally resolved, the disciplinary authority is to investigate the complaint and for the purposes of investigation, the Police (Discipline) Regulation provisions

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[125]. *B.C. Reg. 330/75.*

[126]. *Sec. 52.*

[127]. *The R.C.M.P. E Division is on record as being opposed to the responsibilities given to the commissioner under these provisions. See letter to Mr. Robin Bourne from D.K. Wilson, Dep. Commr. Commanding Officer, E. Division, dated March 6, 1989.*

8 to 11 are deemed to apply.[128] These provisions contemplate the appointment of an investigating officer who is charged with making a recommendation as to whether the matter should be disposed of by laying disciplinary charges, by advising the member who is alleged to have committed a disciplinary default as to his future conduct, or by taking no further action. Because the provisions of the Discipline Regulation relating to "disciplinary charges" and "disciplinary defaults" do not apply to special provincial constables, the process again becomes bogged down. But, to continue the discussion, section 59 details that when a disciplinary authority has investigated a complaint, a notice is to be sent to the complainant, the complaint commissioner and the constable against whom the complaint is made, setting out:

> *(a) a summary of the investigation and the results of the investigation;*
>
> *(b) any disciplinary action intended to be taken by the disciplinary authority and*
>
> *(c) the right of the complainant or constable against whom the written complaint is made to request an inquiry.*

The disciplinary authority cannot take any disciplinary action against the special provincial constable, so once again the process is snagged. The Regulation provides that the employer is to be notified of the results of the investigation,[129] but imposes no obligation on that employer to take any sort of action or even to make a decision that no action is required in respect of the complaint. Section 54 of the Regulation does not contemplate discipline being imposed by an employer other than a police force.

The Act defines a "disciplinary tribunal" in respect of a complaint against a provincial constable as consisting of the "commission, a committee the minister designates or jointly by the commission and a committee the minister designates".[130] Where the minister receives notice requesting an inquiry in respect of a complaint against a special provincial constable, that disciplinary tribunal is supposed to:

> *(a) review the complaint;*
>
> *(b) review the investigation made, and any disciplinary action intended to be taken by the disciplinary authority;*

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[128]. *Section 53, Police (Discipline) Regulation.*

[129]. *Section 53(2)(c).*

[130]. *Section 60, Police Act.*

(c) determine whether the complaint is justified, and

(d) not more than 10 days after it concludes the inquiry, submit its finding and recommendations to the complainant, the provincial constable against whom the complaint is made, the minister, the disciplinary authority and the complaint commissioner.[131]

The provisions attempt to parallel the complaint provisions applicable to municipal police forces,[132] but they fail in doing this and create only the meaningless illusion of a procedure. The most significant error in the conception of the scheme is that the provisions fail to recognize that two bodies can legally "discipline" a person who is a special provincial constable: The employer of the special provincial constable may choose from the range of employer sanctions which include warnings through dismissal; the minister may not discipline in the same manner as the employer, but may revoke the appointment. The whole issue of what discipline may be imposed by which body has not been addressed.

Obviously, the complaint provisions as they relate to special provincial constables are crying out for amendment.

(f) Discipline:

Discipline of municipal police officers is not covered by their respective collective agreements, but is handled under the provisions of the Police Act and the Police (Discipline) Regulations. The quasi-military form of discipline was common to police forces long before the advent of collective bargaining and when collective bargaining was imported to police forces, discipline remained outside the sphere of the collective agreement and the Industrial Relations Act. This is common to all police forces in Canada.

However, as mentioned in the previous section, the Police (Discipline) Regulation does not apply to special provincial constables[133] and some special constables belong to associations

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[131]. *Section 62, Police Act. Interestingly, the only person who can legally impose discipline on the special provincial constable (other than the minister revoking the appointment) is the employer. Neither the Act nor the Regulations mention the employer.*

[132]. *This is a goal that should probably be re-evaluated in view of the differences between special constables and members of municipal police forces. It will be discussed at a later stage in the paper.*

[133]. *However, in 1985, a senior member of Police Services stated that "All persons appointed under the Police Act, are subject to the disciplines of the Police Act, insofar as complaints against their conduct by members of the community". (Letter from Richard Anthony to Mr. George A. Reid, Law Enforcement Division,*

that bargain collectively on their behalf ("unions") which have negotiated collective agreements through which disciplinary matters are handled. Other special constables are, by virtue of their status, considered to be exempt from union membership.[134] In these cases, discipline would be governed by employer-employee law. Interestingly, although more than three quarters of special provincial constables are provincial employees, the Public Service Act does not apply to them.[135]

(g) Dismissal

It is clear that only the Minister may revoke the appointment, and that the appointment is one held during pleasure.[136] It is apparently understood, but not expressly required, that employers of special provincial constables will notify the Solicitor General when a constable leaves their employ so that the appointment may be revoked.[137]

It is also clear that the Minister has no power to dismiss the special constable from his or her employment, this being a matter that is within the exclusive jurisdiction of the employer. However, the appointment may complicate dismissal and there is case law to the effect that for dismissal to be effected, the appointment must be rescinded by the appointing authority.[138] This would mean that both the Minister and the employer must be involved in a dismissal.

In all cases of special provincial constable appointments in this province, the status is not fundamental to the job. It is conceivable that the loss of special provincial constable status would not significantly impair the ability of the former special provincial constable to do his

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Alberta Ministry of Solicitor General, Dated January 30, 1985.)

[134]. *Special constables employed by I.C.B.C. are union exempt as confidential employees, according to Kesley Merry, telephone conversation February 8, 1991.*

[135]. *The provision of the Act which provides this is no doubt a remaining provision from the original Act where special provincial constables were under the direction of the R.C.M.P.*

[136]. *Interpretation Act, R.S.B.C. 1979, c. 206, s. 20(1).*

[137]. *Although the representative of one employer spoke of "revoking" the appointments himself when a special constable left his employment, this is obviously not a valid revocation.*

[138]. *See discussion in Part IV, infra.*

job. Conservation officers, for example, are given a range of powers as conservation officers. In their jobs, conservation officers rely on their statutory powers and rarely exercise those accorded by virtue of the special constable appointment. At the present time in British Columbia, the dismissal of a special provincial constable should result in the revocation of the appointment; the revocation of the appointment would not necessarily result in a dismissal.

(h) Liability

Two sections of the Police Act are applicable to the question of liability of special provincial constables. Section 21 provides that no action for damages lies against any person appointed under the Act for

> *"anything said or done or omitted to be said or done by him in the performance or intended performance of his duty or in the exercise of his power or for any alleged neglect or default in the performance or intended performance of his duty or exercise of his power."*

That section further provides that the minister is not absolved from vicarious liability for special provincial constables arising

> *"out of a tort committed by the constable or other person appointed under this Act for which the municipality, the regional district or the minister, as the case may be, would have been liable had this section not been in force."*[139]

Section 11 specifically makes the minister, on behalf of the Province, jointly and severally liable for torts committed by special provincial constables in the performance of their duties.

The effect of the current provisions is to absolve the employer of all legal responsibility for the acts of a special constable. The current legislative provisions appear to have resulted less from conscious policy formulation on the part of the government and more from mere inadvertance. Section 11 was present in the original Police Act, when special provincial constables came under the jurisdiction of the R.C.M.P. When special provincial constables became autonomous no change was made to the section.

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[139]. *Section 11 is the section that provides for ministerial liability for torts of special provincial constables.*

4. Summary

Special constables are in a void of accountability to the government. They are not public police officers, but they have a heightened status. Their employers are accorded by default a vast amount of freedom in regard to supervising their training and conduct but are not recognized under any legislation and are not held liable for their actions. There are no rules for determining when such appointments shall be made and no procedure for ensuring that appointments are revoked when appropriate. The Act purports to deal with complaints against special constables but its provisions in this respect are unenforceable. There is no consistency with regard to any of the fundamental aspects of accountability relating to special constables. The paper will now turn to the considerations relevant in designing a blueprint for accountability.

IV. DEVELOPING A SCHEME OF ACCOUNTABILITY:

A scheme of accountability for special provincial constables must recognize that the appointment confers upon that official certain peace officer powers, the extent of which is dependent upon the terms of the appointment itself and the responsibilities of the particular special provincial constable. In the result, the peace officer status gained by the appointment is often very limited in scope.

Developing a scheme of accountability has been done in two stages: The first and fundamental stage addresses the two important questions:

1) To whom should special provincial constables be accountable?
2) To what extent should special provincial constables be accountable to the government?

The answers to those questions will determine the philosophical basis upon which to build the scheme. Next, explicit options for extracting accountability can be explored and determined. Generally, the option chosen will determine whether a particular matter should be relegated to policy or legislation.

A. Status as Governing Accountability:

It was stated earlier that a scheme of accountability must rest on the status given to a special provincial constable under the appointment. While it is logical to take such an approach, the fact that many government employees who have not been appointed in any capacity under the Police Act have been given by statute the same or greater powers as are given to the special provincial constable by appointment, reveals a major inconsistency in such an approach. Examples of provincial employees who have similar powers are:

> Returning officers and deputy returning officers[140] are peace officers from the time of the nomination of candidates until the day following the final closing of the election, and in addition have the "same powers which a justice has in the province" for the arrest, detention, admission to bail, trial and conviction of any person who breaks the law or troubles the peace;

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[140]. *Sec. 139 of the Municipal Act, R.S.B.C. 1979, c. 290, and section 149 of the Election Act, R.S.B.C. 1979, c. 103.*

> The fire commissioner, his inspectors and local assistants have the powers of a peace officer under the Fire Services Act.[141];
>
> A registrar of the County Court "shall exercise the authority of a constable during the actual holding of the court";
>
> Lifeguards employed under the Vancouver Charter "while in the performance of his duties within the parks" are "ex officio possessed of all the powers and authority of a police constable";

Water bailiffs under the Water Act, certain employees under the Motor Carrier Act, inspectors under the Cattle Horn Act, and sworn officers and employees under the Prevention of Cruelty to Animals Act all have the "powers of constables" in order to enforce those acts.

While acknowledging a degree of inconsistency in setting up a formal system to extract accountability from special constables but not others with similar powers, there are several differences between special provincial constable appointments and those given government employees under various acts: First, special provincial constable appointments are given to employees of private corporations and crown corporations and not just to members of the public service; Second, a special provincial constable appointment carries with it, in the mind of the appointee and in the minds of the public, a perceived status, in some respects akin to that of a public peace officer; third, special provincial constable status has resulted in the creation of quasi-police forces, such as that of B.C. Transit.[142]

Although special constables[143] are appointed under the Police Act, the status of a special constable is not comparable to that of a member of a municipal police force or a member of the R.C.M.P., and any scheme of accountability should recognize that. Special constable status is recognized by the case law as a mere adjunct to powers. Accountability should be based on the realities of the jobs performed by these constables and not on the titles accorded to them.

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[141]. *Sec. 7, R.S.B.C. 1979, c. 133.*

[142]. *Further, it should be noted that simply because there is no formal method of public accountability yet developed for government employees with police powers does not mean that consideration should not be given to setting up such a scheme. But that question remains to be addressed elsewhere.*

[143]. *In this section, "special constable" means "special provincial constable."*

1. To whom should special provincial constables be accountable?

Identifying the body to whom special provincial constables should be accountable seems easy enough, but the "dual nature" of the functions performed by special provincial constable considerably muddies this question. All special provincial constables in this province hold their appointments to give them extra powers in their existing capacities as employees of private corporations, crown corporations or provincial ministries. If they did not carry such appointments, their day-to-day jobs would be similar, in some cases identical, to what they are now. If they did not carry such appointments they would certainly be accountable to their employer to perform their jobs competently. It does not seem logical to suggest that by virtue of the appointment that they should no longer be held accountable to their employers.

However, the appointment as a special provincial constable places that person in the category of "office holder". It has long been held by the courts, both in England and in Canada, that police and other peace officers who must exercise such police powers and responsibilities, exercise an original, not a delegated, authority. In other words, in the exercise of those powers and responsibilities, they are responsible not to the authority which immediately employs them but to the Crown, since they are performing the original peace-keeping authority of the Sovereign. (references omitted)[144] The fact that a constable is privately employed seems to be of little significance to this principle. Thus, constables appointed under the Railway Act have been held to be "public constables just as much as in the case of constables appointed and paid by municipalities."[145] While the concept of a constable has been considerably watered down by recent case law, special constable status still appears to be recognized as entailing some degree of responsibility to the Crown, especially in view of recent case law from Ontario dealing with dismissal of special constables.[146]

It seems that the only possible answer to the question "To whom is the special provincial constable accountable?" has to be that "The special provincial constable is accountable both

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[144]. *Stenning and Cornish, ibid., p. 209-210.*

[145]. *Rex. v. O'Brien [1919] 3 W.W.R. 467 (App. Div., Alta. S.C.)*

[146]. *This will be discussed, infra.*

to the government (as appointee and as representative of the public) and to his or her employer."

The province of Alberta is the one province in Canada that appears to have undertaken a thorough consideration of the issue of special constables[147] and it has recognized the dual aspects of accountability inherent in the appointment of special constables. That province, with approximately 1700 special constables employed by 170 employers[148] has recently enacted legislation that indicates a novel but realistic approach to the accountability of special constables. The legislative scheme recognizes the legal responsibility of the Solicitor General for special constables as well as the responsibility of the employer. The Alberta Police Act and Special Constable Regulations[149] require the employer to meet stringent criteria prior to employing a special constable. It provides that the Solicitor General is responsible for the oversight of special constables, but it gives the Solicitor General the authority to delegate some aspects of his responsibility to the employer of the special constable. The Alberta scheme seems sensible and workable and it has been drawn upon in formulating policy in this report.

2. Extent of Public Accountability:

The extent of the public duty owed by a special provincial constable is nowhere close to that of a public police officer and to indicate otherwise presupposes that the special provincial

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[147]. *The other provinces in Canada do not appear to have reached the point that Alberta has with respect to its special constables. Nova Scotia, for example, developed special constable legislation but it was never proclaimed. The Act appears only to refer to special constables employed by a municipality.*

Ontario, with more than 2000 special constables, recently attempted to make the municipal police departments responsible for special constables within their jurisdictions. The municipal police forces recommend and screen provincial constable applicants and Ontario appears to be attempting to achieve accountability with a minimum of legislation. A representative of the Ontario Police Commission stated that agreements are worked out with groups of special constables and the local police force to take direction from it. He said, however, that the local police boards are reluctant to actually supervise special constables because of civil liability problems. Local police forces now recommend and screen applicants for special constable status.

It is not clear if Manitoba's act applies to special constables and Saskatchewan appears to treat special constables much the same way as regular police officers.

[148]. *Telephone conversation with Jim Bennett, Alta. Dept. of Law Enforcement, November 19, 1990.*

[149]. *That province has had a special constable regulation since 1973 (Special Constable Regulations, Alta. Reg. 109/73.) A copy of the new Regulations, Alta. Reg. 357/90, is appended to this report.*

constable has power and protection to act in the broad public interest for all purposes. The case law does not bear this out. In keeping with the considerably more circumscribed power of a special provincial constable, the degree of public accountability to be extracted must be considerably less than that demanded of a public police officer.

Accountability must rest on the two hallmarks of authority figures in our society: Power and Trust. Accountability should ensure that training, supervision, discipline and complaints all relate to those two aspects. As a society we want to ensure that those in authority over the citizens utilize their powers only when necessary and only to the extent necessary and that they do not abuse the trust placed in them. We want to ensure that there are mechanisms in place to prevent such abuses and to detect and rectify such abuses if and when they occur.

The various aspects of accountability will now be discussed, beginning with the appointment process.

B. SPECIFIC AREAS OF ACCOUNTABILITY:

1. Appointment:

Determining when appointments should be made, whether a person is a fit person to be appointed and the form of the appointment are fundamental in setting up a scheme to ensure that special constables are accountable for their actions. Presently these matters are determined on an ad hoc basis by Police Services Branch. That branch is the appropriate body to re-evaluate the process of appointment since it is privy to the reasons for the request and the description of the person to be appointed. It will be making its own recommendations on changes to the appointment process in due course. However, because the appointment process is an integral factor in accountability, it would be remiss not to consider changes to the appointment process in this report. These comments can then be discussed in conjunction with any changes proposed by Police Services Branch.

The necessity for the appointment is the first matter to be considered. As was explored in Part II of this report, the powers gained by special constable status are not wide ranging, but must relate to the job(s) performed by the special constable. The first question to be

addressed in determining whether an appointment should be made is: What powers or responsibilities will special constable status give that person over and above those given by the empowering legislation? Obviously, if there are none, the appointment should not be made. This determination will involve a careful review of the empowering legislation, the wording of the Offence Act and the Criminal Code. It should be borne in mind that peace officer status is not fundamental to the exercise of all powers under those statutes.

The next question to be addressed is: Why are those powers necessary? This is a more complex question. One group of special constables will state that they cannot perform their jobs without the status[150], another will state that they could perform their immediate jobs without the status but that the status enables them to perform tasks in the course of their work that are in the broad public interest and would otherwise fall to the public police forces. A conservation officer seizing a restricted weapon under the provisions of the Criminal Code would fall in the latter category.[151]

The special constable appointment is probably more appropriate for appointments of the latter type than the former. However, until a more satisfactory manner of constituting quasi-police forces is instituted, the appointment process must recognize the validity of such appointments.

All appointments should first be screened to determine if they are in the public interest. One major consideration would be whether it is in the public interest to confer peace officer powers on employees of private companies such as Alcan. Not knowing precisely the justification for the appointments to have been continued, this question cannot yet be answered.

Once the appointing authority has established that the reasons for requesting the appointment are sound, attention must turn to whether the applicant is suitable and whether he or she will

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[150]. *An example of this category of constables is that employed by I.C.B.C. According to K. Merry, the municipal police departments as currently staffed and funded simply could not handle the volume of investigations processed by this department. Without the status, he says, the effectiveness of the department would be severely constrained.*

[151]. *The powers given to conservation officers in their empowering legislation are sufficient to handle most cases. Peace officer status is necessary to deliver court documents, execute warrants and enforce those sections of the Criminal Code dealing with weapon restriction. These matters could be left to the public police force of jurisdiction but to do so would be a considerable waste of manpower and resources.*

be properly supervised in the job.

Basic qualifications should probably be legislated. Alberta's Police Act sets out the barest qualifications of a special constable but the Regulation contains significant detail on not only the qualifications to be met by the prospective appointee but by the employer of that appointee.[152] An employer is granted an authorization to employ a special constable only

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[153]. *A person may be appointed as a special constable where the following requirements are satisfied:*

(a) the employer or prospective employer, as the case may be, of the special constable is authorized by the Solicitor general under section 3 to employ a special constable;

(b) the Solicitor General is satisfied that

(i) the circumstances are such that there is a need for a special constable to provide the services of a peace officer in the particular circumstances,

(ii) with respect to the employment of that person as a special constable, the employer or prospective employer, as the case may be, has adequate policies and procedures respecting

(A) the carrying out of the authority, responsibility and duty of the special constable,

(B) the standard of conduct to be met by the special constable,

(C) the administration of discipline that is to be applied in respect of the special constable, and

(D) the handling of any complaints that may be made in respect of the special constable.

(iii) the services to be provided by the special constable do not conflict with or compromise any functions or policies of the Government of Alberta

(iv) the person who is to be appointed as a special constable is

(A) of good character, and

(B) qualified to carry out the services required of the special constable;

(c) the person who is to be appointed as a special constable
(i) meets the requirement of section 34 of the Act [requiring Canadian citizenship]

(ii) is 18 years of age or older, and

(iii) has not been convicted of an indictable offence or, if he has been convicted of an indictable offence, he is eligible to be granted a pardon in respect of that offence.

after it satisfies the Solicitor General as to its policies and procedures respecting the carrying out of the authority by the special constable, the standard of conduct to be met by the constable, the handling of complaints and the administration of discipline. The employer's authorization sets out the authority and responsibility of the special constable as well as the duties and territorial jurisdiction of the constable. It also identifies the standard of conduct to be met, the administration of discipline and the procedure to be followed in handling any complaints that may be made in respect of any special constable employed by it.

The current practice of Police Services Branch of relying on the employer to check the applicant's character is not sound. There is a duty on the Solicitor General to ensure that appointees are fit and qualified for the appointment and relying on the employer to screen appointees is a dereliction of this duty. Many special constables are ex-police or ex-military officers. While it apparently is the current practice of the Police Services Branch to ask the applicant about the reasons for the officer having left his or her former position, it would seem preferable to check directly with the former employer as to the work history and reasons for leaving. A general background check should also be performed.[153]

The screening of potential appointees could be left in the hands of the Solicitor General or could be given to an independent agency such as the Police Commission. It may be sounder in some respects to have an outside agency screen the applications because of the value of independent input, but it is sounder in principle to have the Solicitor General rely on his or her staff to do the screening. In the same way an employer must be satisfied as to the fitness of an employee, the Solicitor General must be satisfied as to the fitness of the appointee.

The form of the appointment dictates the powers the special constable will have and is extremely important. The appointment could be framed in fairly wide terms and limited with a letter of understanding between the ministry, the special constable and his or her employer, or alternatively, the appointment could be framed in very narrow terms. A narrow form of appointment would refer only to certain sections of the Criminal Code rather than to the entire Criminal Code and would specifically tie the powers to the job functions

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[153]. *Alberta's special constable regulation requires the applicant to consent to "one or more" of the following: A fingerprint search; a criminal record search; and a review of any files that may be maintained by a police service. (s. 4(2))*

of the person appointed. Proponents of a wide appointment state that a narrow appointment simply gives defence counsel another route to attack any resulting criminal proceedings and is not flexible enough to handle unforeseen circumstances.

In making the decision on the form of appointment, it is important to remember what we are attempting to accomplish: We want to ensure that each special constable knows that his or her powers are limited and is not under the mistaken apprehension that the appointment gives that constable the same powers as a public peace officer; We also want to ensure that the constable acts within the powers.

The case law has determined that peace officer status must relate to the jobs that the special constable was hired to perform and the mandate of the organization to which he or she belongs. Reiterating that principle in the appointment can do nothing but clarify the position of the constable. Leaving it out would not alter the law.

A major concern is the wording of the appointments. The appointment could be framed widely or narrowly, that is, it could confer the power to generally enforce certain pieces of legislation or could refer only to certain sections of certain Acts. It seems reasonable that where the powers sought by the appointment are solely for specific purposes, such as those sought by the conservation officer service and those given to municipal employees to handle exhibits and stores for the R.C.M.P., limited appointments should be made. However, it might not be practical to frame the appointments narrowly for the employees of the quasi-police organizations like B.C. Transit and I.C.B.C. because of the wide range of situations encountered by those organizations. Appointments for constables employed by organizations such as those ones might include the entire statute. Where this is done, however, the limit of the intended exercise of those powers should be specifically set out by agreement between the employer and the Solicitor General. The agreement might provide:

> That search warrants and warrants of arrest should only be executed while in the company of a municipal or provincial police officer;
>
> That arrests necessitating the use of force will only be made under the specific circumstances detailed in the agreement;
>
> That a municipal or the provincial police force is to be called in at the earliest possible opportunity whenever a crime relating to injury to a person is detected or suspected;

Those are only examples. The exact details of each agreement will be specific to circumstances. One caution should be inserted here. If a constable went beyond the instructions given to his employer but remained within the terms of his or her appointment and within the scope of the duties for which he or she was hired, that constable could probably not be disciplined or faulted for his or her actions because of the principle that the employer cannot restrict the duties otherwise assigned by law to that constable. The only way to avoid this problem is for the appointment to be framed in as narrow terms as possible.

Appointments of special constables in Alberta specify the "authority, responsibility and duties, and the territorial jurisdiction" of the special constable. Without exception, all special constable appointments in that province are limited in territorial jurisdiction. It has not been the practice of this province to limit special constable appointments to a particular jurisdictional territory and probably section 10(1) of our Police Act requires that this be done through regulation rather than under the appointment. The Act should be amended to allow for the territorial jurisdiction of a constable to be limited. Consideration should be given to imposing jurisdictional limits where appropriate. Appointments for Alcan are a good example of appointments that should be limited to a particular territory, if they are made at all. Similarly, appointments for certain hospital security officers should certainly be limited to the hospital grounds, if such appointments are made at all.

2. Training:

The training requirements of special constables are similar to the requirements of any enforcement body and do not relate specifically to special constable status. These training requirements vary from body to body. It is not appropriate to legislate training in the manner that has been done for municipal constables. Matters of training must remain flexible and in the employer's hands but there should be some process involved to ensure that training is adequate.

Some body, presumably the Police Commission, should be given the authority to inquire into the training program of any particular group of special constables and to recommend changes as necessary. Presumably, the expertise of the Justice Institute would be called upon where necessary.

3. Possession and Use of Firearms:

The possession of restricted weapons by special constables appears so far to be a non-issue since peace officers are only exempted from the requirements to register weapons when they are of a category that has been designated under regulation and when they require the weapons for the purposes of their work. Examining the list of appointments by organization, there would seem to be no reason for any group of special constables, with three exceptions, to have access to weapons for the purpose of employment. Those exceptions are conservation officers, exhibit custodians (who may handle weapons as exhibits) and storespersons (who may handle weapons in that capacity). The Criminal Code does not open the door for all peace officers to have weapons, but its provisions are such that the control over whether a special constable has a weapon or not is not in the hands of the appointing authority. It would seem a reasonable proposition to prohibit all special constables with the three named exceptions above, or others that may arise from time to time, from possessing weapons for the purposes of their employment. This prohibition could be done on the appointment. The effect of such a practice will be that the Police Services Branch will know at any given point in time which special constables are authorized to carry weapons and which are not.

As for the use of firearms, it would be a simple matter to amend the Police Firearms Regulations so that they applied to special constables. There is no reason why this should not be done.

4. Discipline:

At the beginning of this part, it was determined that the special constable should be accountable to both his or her employer and to the Solicitor General. Nowhere is this dual accountability more apparent than in the matter of discipline. There are two aspects to disciplining a special constable: On the job discipline and revocation of the appointment. The power to discipline is held both by the employer and by the appointing authority.

Municipal police officers belong to associations, but matters of discipline are not dealt with under the collective agreement. On the job discipline of municipal police officers is handled through the Police (Discipline) Regulations, through militaristic quasi-criminal proceedings

based on a Discipline Code. The Police (Discipline) Regulations have been criticised as being deficient and inappropriate in many aspects and it is conceivable that changes to them may be made in the future. However, that discipline should be based on an explicit discipline code appears to be accepted by most parties knowledgeable in the area.

The employment of special provincial constables is handled in an entirely different manner. Many special provincial constables belong to associations that bargain collectively with their employers ("unions") and discipline is governed by the collective agreement and the provisions of the Industrial Relations Act. Presently, special constables, whether represented by an association or not, are disciplined without reference to a "code of behaviour". The employer may have written or unwritten policy that governs certain behaviour, but where not, common sense prevails. If an employer considers an employee to have done something wrong, the employer will take the action considered appropriate in the circumstances. If the employee is dissatisfied with the discipline and is a member of an association, a grievance under the terms of the collective agreement may be taken by the union on behalf of the member.

No valid reason exists to change the present mode by which an employer disciplines a special constable since the employee-employer relationship remains unchanged. What must be determined is a discipline scheme appropriate to the appointment, as distinct from the employment, of the special constable.

An examination of the discipline codes of any police force will reveal two golden threads running through them: Most matters relate either to a breach of trust or inappropriate use of powers.[154] Abuse of trust includes anything relating to "honesty"--perjury, theft, altering official records and so on. Inappropriate use of power would include using unnecessary violence or excessive force, taking a bribe, being discourteous and misusing a firearm. Those two golden threads should form the basis for any disciplinary action taken by the Solicitor General.

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[154]. *It is true that certain matters that do not so relate, such as failure to obey lawful orders; damage to police property, are sometimes included in discipline codes as well, but these matters do not relate to the status of the police officer in society, but rather to the efficient running of the police force. They are inapplicable when discussing public accountability for special provincial constables.*

The employer of the special constable has a broader interest in discipline than does the Solicitor General. Certainly, the employer has an interest in the same matters as the Solicitor General, but additionally, the employer will want to ensure prompt attendance at work, respectful attitudes toward superiors and so on. There is no logical justification for the Solicitor General to be interested in how the employer of a special constable handles those matters.

The dual nature of the jobs performed by special constables are such that the loss of the appointment is not tied to the loss of a job. With public police officers, this is not so. In so far as the employer's interest in discipline is concerned, there can be no reason to impose a regime different from the one currently used.

The appointment, on the other hand, is in the sole hands of the Solicitor General. The appointment should be revoked where the appointee appears to be no longer fit to hold it. Fitness to hold the appointment should be related to abuse of trust or abuse of power.

The province of Alberta has recognized the dual responsibility of the Solicitor General and the employer by providing as follows:

> *(4) The Solicitor General is responsible for*
> *(a) the discipline of special constables, and*
> *(b) ensuring that special constables carry out their authority, responsibility and duties in a proper manner.*
>
> *(5) The Solicitor General may delegate his responsibility under subsection (4) to the employer of the special constable.*
> .....
>
> *(11) The Solicitor General may delegate his powers and responsibilities under this section to the Director or to another employee of the Government who is under the administration of the Solicitor General. ("Director" means Director of Law enforcement appointed under section 8)*

Currently, neither the Act nor the Regulations provide any mechanism for the revocation of the appointment. The lack of any such mechanism means the principles set out in Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police[155] apply. That case dictates that there be procedural fairness in the revocation of appointment. That means that

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[155]. *[1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, 78 D.L.L.C. para 14, 181, 23 N.R. 410.*

the constable must be given notice that the revocation of the appointment is being contemplated and must also be given the opportunity to respond, in writing or in person. Because the appointment is not integral to the job the constable performs, there seems to be no reason to expand the requirements to include anything other than procedural fairness.

Ensuring that the Solicitor General is made aware of any conduct on the part of the appointee that goes to the fitness of his or her character to hold the appointment will demand cooperation on the part of the employer. While the complaint process described below will ensure that matters that are the subject of a complaint are brought to the Minister's attention, other matters might not be the subject of a complaint but are vitally important. Theft from the employer is one example, falsification of records is another. It should be incumbent on the employer to report any allegations of such matters to the Minister whether or not ~~the~~ employer chose to take disciplinary action with respect to them.

5. Dismissal:

The ultimate discipline is dismissal from employment. Special provincial constable status may complicate the dismissal of that constable from his or her employment.

At least two cases have dealt with the dismissal of special constables and both are from Ontario. Care must be taken in relying upon those cases, since the special constables in those cases were appointed under legislation that is different from ours. However, the principles illustrated appear to be applicable to all such appointments.

One case affirms that, although the disciplinary procedures of the Police Act might not be applicable to special constables, a special constable is owed a duty of fairness and is entitled, either orally or in writing, to respond to the reasons for his termination.[156] This principle follows the Supreme Court of Canada decision in Nicholson and there is little reason to distinguish the situation of special constables in British Columbia.

In another case, the Ontario High Court considered the dismissal of special constables who were appointed under section 69 of the Ontario Police Act which provided in part:

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[156]. *Re Fleming and Commissioner of Ontario Provincial Police (1983) 147 D.L.R. (3d) 765, (Ont. H.C., Div. Ct.).*

> *(4) The authority who has appointed a special constable, or the Commission, may suspend or terminate the services of such constable, and written notice of the suspension or termination shall, if made by the Commissioner or a judge, be forthwith transmitted to the Commission."*

The Court held that only the authority that appointed the special constable could suspend or terminate that special constable.[157]

In that case, the subject officers had dual status as court security officers and as special constables. They were bound by a Collective agreement which specifically provided that

> *"...members will be dealt fairly and equitably and in a manner consistent with the provisions of the Agreement, the Police Act and the regulations made thereunder by the Lieutenant Governor in Council."*

The court found that the right of the board to suspend or discharge was subject to section 69 of the Police Act and held that neither the board nor the chief had any right to suspend or discharge the special constables. The following passage from the case deals with the dual status of the special constables:

> *"It was submitted that the respondent followed the usual process and that the applicants had a dual status as court security officers and as special constables. In that dual status, it was submitted that they were subject to the Collective Agreement and to dismissal by the chief of police as a delegate of the respondent board.* ***The argument seems to suggest that the status of special constable is an ancillary formality. While that may be how the situation is viewed as a practical matter, the plain meaning of s. 69 cannot be ignored. No special constable may be appointed without Commission approval and only the appointing authority or the Commission may suspend or terminate."***[158] *(emphasis added)*

Whether such reasoning would be followed in British Columbia under our present legislation is unclear, but it would be prudent to comply with the judgement in designing a system that provides for the discipline and dismissal of special constables. Notice of dismissal should be given both by the employer and by the Solicitor General.

6. Complaints:

A "complaint" against a municipal police officer is inexorably linked to the discipline code contained in the Police (Discipline) Regulations. In order to implement a complaint process that parallels the process applicable to a municipal police officer, the discipline method

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[157]. *Kearney v. Ottawa (City) Commissioners of Police (1988) 48 D.L.R. (4th) 566. (Ont. H.C., Div. Ct.)*

[158]. *Ibid., p. 569.*

employed for special constables would also have to parallel that applicable to the municipal police officer, and this approach has been rejected.

The goal in designing a complaint process applicable to special constables should be to ensure that any person who believes that he or she was subjected to an abuse of power or trust of a special constable has the right to have the matter reviewed independently. Because special constables have far less power than public police officers, there is no justification for having a complaint process as complex as that contained in the current Police Act.

The first problem is that of defining "complaint." How can "complaint" be defined and restricted to actions of the special constable as a special constable, and not cover the actions of that constable in his or her "other" capacity? In other words, can and should the term "complaint" be defined in such a manner as to include the actions of a conservation officer acting as a special constable, but not the same actions when he or she is acting as a conservation officer? It became apparent that making such a dichotomy would become unwieldy. It also appeared that making such a distinction could defeat the intent of the scheme. A special constable who exhibits dishonesty in any capacity should have the appointment revoked.

It appeared that the best option was to define "complaint" in very general terms and allow an impartial third party to determine if, in its substance, the "complaint" affected the fitness of the special constable to hold his or her appointment. The plan would call for all complaints about the performance of a special constable to be forwarded to the impartial third party for review. If the complaint was determined to be one that would, if true, go to the fitness of the special constable to hold the appointment, the progress of the complaint would be monitored and, if necessary in the public interest, independently investigated. If the complaint was determined to be one that would not go to the fitness of the constable to hold the appointment, the complaint would be relegated to the discretion of the employer and the monitoring and reporting requirements of the Police Act would not apply.

The Complaint Commissioner provided for in the Police Act appeared to be the most appropriate person to determine the substance of the complaints. The recommended scheme would set the Complaint Commissioner up as a reviewer of first instance who would determine if the complaint provisions of the Police Act would apply.

If the Complaint Commissioner determined that the complaint was one to which it was appropriate that the complaint provisions of the Police Act apply, he or she would make the initial determination as to whether the complaint would be investigated by the employer or by a third party, appointed by the complaint commissioner. Implicit in this plan is the power to delegate any disciplinary authority belonging to the Solicitor General to the employer. The authority for this delegation should be set out in the Act, but the actual delegation would have to be done in writing between the employer and the Solicitor General.

Where the investigation of the complaint should not be left in the hands of the employer for reasons of the public interest or because there is reason to suspect that the investigation cannot be done by the employer impartially, the Complaint Commissioner should be given the authority to turn the investigation over to a third party. Once again, legislative provision would have to be made to ensure the employer cooperated with such an investigation.

Whether the investigation was done by the employer or by a third party, the notice requirements contained in the Act would apply. The employer would discipline the employee in the normal manner and notice would be given to the Complaint Commissioner and the complainant at the end of that process. The Complaint Commissioner would then determine whether recommendation should be made to the Solicitor General that the appointment as special constable be revoked. The Complaint Commissioner should be entitled to make the inquiries he or she feels appropriate.

The Solicitor General would then decide whether the appointment was to be revoked. There appears to be no legal need for a formal hearing at any point and in the interests of a simple scheme, one is not recommended.[159]

It is not recommended that the complainant have a right to have the complaint publicly aired. The review by the employer, the monitoring by the Complaint Commission and final review by the Solicitor General should ensure that the public interest is sufficiently protected without the necessity of a public inquiry. In the rare cases where it is thought advisable to

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[159]. *The principles set out in Nicholson require that the Solicitor General give the special constable notice that revocation is being considered and allow the constable to make representations verbally or in writing as to why such appointment should not be revoked.*

have such a public airing, it is probably advisable to make provision in the legislation for such an inquiry to be held at the discretion of the Police Commission or the Solicitor General.

7. Liability

It was earlier stated that the provincial government is liable for the torts of all special constables. This provision clarifies the law but it does not appear to have been a conscious policy choice on the part of government. It appears, rather, to have been a hold over from the time when special provincial constables were under the supervision and direction of the provincial force.

The legislative provisions with respect to the liability of special constables for torts are laudable in that they tend to clarify the question of legal responsibility for torts committed by privately-employed special constables. The older cases make a distinction between the office holder's public duty and that owed to his or her employer which makes the issue of liability at common law unclear.[160] The Supreme Court of Canada appeared to make a distinction between the acts of a constable appointed by a municipality when he acts as municipal officer for the purpose of enforcing the observance of the local ordinances and his acts in guarding the peace and enforcing observance of the laws concerning public order. Because in the latter situation his duty is not to obey the municipality but to act according to law, his actions will not result in liability to the municipality that appointed him.[161]

At common law, where a peace officer is employed by a private corporation, that corporation could be liable in tort for the actions of the constable when he or she was acting on behalf of the corporation. However, when the constable was acting as a guardian of the peace to enforce public order, the corporation could not be held liable for his torts. Thus, a constable employed by a municipality but paid by a circus who is found liable in tort for his actions in stopping a riot cannot claim reimbursement from the municipality (his employer) because in stopping the riot he was not acting as servant of the municipality but as a public

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[160]. *See Freedman and Stenning, Private Security, Police and the Law in Canada, pp.166-178 and authorities cited therein.*

[161]. *Louis Hebert v. La Cite de Thetford-Mines [1932] S.C.R. 425.*

officer.

> *"There is a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he is said to serve. The constable falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office; he is a ministerial officer excising statutory rights independently of contract."*[162]

There seems to be no policy reason why the provincial government should remain liable for the torts of special constables not employed by the government, especially where the authority of the constables is limited so that they would not be required to act as "constables" in the historical sense of preventing breaches of the peace and so on. The employer of the constable should be liable for torts committed by that constable.[163] Of course, when the provincial government is the employer of the constable, it should be held liable for any such torts in its capacity as employer.

This recommendation recognizes that "constables" in name should not recognized as having common law "constable" duties when they do not have powers commensurate with those duties. The Act should provide that they have no such duties and the oath sworn by the constable should be changed to reflect that fact.

8. Perception of Status

This is a tricky issue upon which to formulate recommendations. On the one hand, it is important that special constables with their limited authority not be perceived as public police officers. On the other hand, it seems clear that the mere presence of individuals perceived as having the status of police officer can effect a greater positive influence on behaviour than the presence of persons not perceived as having that status.

There are two elements to the perception of status: The title accorded to the person and the "accoutrements" of status. As for the title given to the special constable, it was stated earlier that there is no prohibition contained in the Act against special constables calling themselves "police". The province of Alberta makes a distinction between "police officers"

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[162]. *A.G. N.S.W. v. Perpetual Trustee Co., [1955] A.C. 457 at pp. 489-90; quoted with approval in Ref. re Power of Municipal Council to Dismiss a Chief Constable, (1957) 118 C.C.C. 35 (Ont. C. A.)*

[163]. *This is what the province of Alberta provides, see Police Act S.A. 1988, Ch.. p-12.01, s. 42(6).*

and "special constables" and provides that only the former may call themselves "police".[164] The province of Ontario does not restrict the use of the word "police" to fully empowered public police officers.

Certainly, much literature refers to "private police", a contradiction in terms if the word "police" is taken to mean only the public police. That being said, however, there can be no denying that in common usage today, the word "police" connotes a member of the public police force with full peace officer status. Because of that, it will be recommended that special constables be prohibited by the Act or Regulations from calling themselves "police" officers.

As for the "accoutrements" of a police officer, badges and blue police uniforms, the B.C. Transit security services has stated its intention to comply to the extent practicable with the "spirit" of the Private Investigators and Security Agencies Act which does not technically apply to them.[165] However, those officers wish to wear blue uniforms. In view of the positive benefits that could accrue to them by virtue of wearing such uniforms, it would seem not to be in the public interest to prohibit them from wearing them. However, the wearing of police-like uniforms should not be allowed in all cases. One can easily see, for example, the inadvisability of allowing a municipal employee working as an exhibit custodian in an R.C.M.P. detachment to wear a police-like uniform. It will be recommended therefore, that the matter of uniforms be a discretionary matter, to be determined by the employer and the Solicitor General. Once determined, the matter of dress would be set out in the agreement between the employer and the Solicitor General.

The following section of the report will set out specific recommendations in accordance with the development of them in this section.

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[164]. *Police Act, S.A. Ch. P-12.01, s. 54.*

[165]. *Bourne, Robin op. cit. note 104, p. 9.*

V. RECOMMENDATIONS:

Before turning to the recommendations, one matter was alluded to at the beginning of this report and it bears reinforcement at this time. This report was commissioned specifically to recommend a scheme of accountability for special provincial constables and not to question the use of such appointments. The fact that this report recommends a method of extracting accountability from all types of special constables, including those involved in "quasi-police forces", should not be taken to signal an acceptance that the special constable appointment is a valid way of constituting such forces, or even that the special constable appointment is a necessary and desirable appointment in any other circumstances.

On that cautionary note, the recommendations may be made. The recommendations recognize that special provincial constables should be accountable in a broad sense, but that the degree of accountability should not be as onerous as that demanded of a municipal constable. The employer of a special constable is given a large measure of responsibility for training and disciplining the constable. This responsibility recognizes the reality of the employer-employee relationship to which the special constable status is merely adjunct. For ease of reference, the recommendations are classified according to the subject matter with which they deal.

SPECIAL CONSTABLE STATUS:

IT IS RECOMMENDED THAT:

The Act provide that special constable status is peace officer status only to the extent of the powers and for the purposes conferred under the appointment;

The Oath Regulation (B.C. Reg. 113/76) be amended as it applies to special constables to more accurately reflect their powers and duties;

The Act provide that special constables may not represent themselves as "police officers";

The Act provide that the appointment of a special constable may limit the territorial jurisdiction for which the appointment is valid.

The Act specify that the employer of the special constable is responsible for the special constable not exceeding his powers and authority.

The Act specify that the principles of vicarious liability will apply to employers if a special constable is found liable for exceeding his powers and authority, unless it is proven that the employer did not authorize the excess.

The Act specify the extent of the public duty owed by a special constable and further specify that when the public duty and the private duty of the employer conflict the public duty is paramount.

The Act be amended to provide for the making of regulations with respect to all matters relating to the appointment and accountability of special provincial constables;

A new regulation be enacted to deal specifically with special constables, and include matters of qualifications, discipline and complaints; (This will be referred to as the "new regulation")

All references in the Police (Discipline) Regulations to special provincial constables be deleted;

APPOINTMENTS:

IT IS RECOMMENDED THAT:

The Act provide that the appointment of a special constable may be rescinded at any time.

The new regulation provide that a special provincial constable satisfy certain criteria, specifically that he or she meet appropriate citizenship standards and have fitness of character.

The new regulation provide that the employer satisfy the Solicitor General that there is a need for the person to be appointed.

The Solicitor General ensure, independently of the employer, that the character of the applicant is sound by, at the minimum, performing a background check and inquiring into the past employment of the applicant. This is a matter of policy.

The form of the appointment be framed in as specific terms as possible;

Firearms:

IT IS RECOMMENDED THAT:

Unless the employer satisfies the Solicitor General that possession of a firearm is necessary for the employment of the special constable, the appointment form provide that possession of firearms is prohibited;

The Police Firearm Regulations be amended to apply to special provincial constables;

The Solicitor General maintain a record of all special constables with firearms;

The Solicitor General provide the record of special constables with firearms to the Police Commission in order that the Police Commission may ensure that training standards are adequate and that the provisions of the Police Firearm Regulations are complied with.

Standards and Rules of procedure:

IT IS RECOMMENDED THAT:

The new regulation provide that the employer be required to ensure that the special constables in its employ are provided with adequate direction.

Section 42 of the Act be amended to include in the functions given to the Police Commission the general oversight of the operations of employers of special constables similar to that contained in s. 42(c);

The new regulation provide that upon request, the employer shall file with the Police Commission, or provide access to the Police commission, its standards, operating manual and so on.

The new regulation provide that if the Police Commission is of the opinion that the operating procedures of the employer of a special constable are deficient or inaccurate, it may notify the Solicitor General and the employer.

Training:

IT IS RECOMMENDED THAT:

The employer be responsible to ensure the adequate training of all special constables in its employ.

The Act give the Police Commission authority to monitor the training program and to receive details on it upon request (This would be included within the authority of a provision similar to 42(c) of the Act as detailed above).

Complaints:

IT IS RECOMMENDED THAT:

The Act be amended by defining complaint against a special constable as "a complaint in writing about the conduct of a special constable" or similar terms;

The Act provide that complaints against a special provincial constable may be filed with the employer or with the complaint commissioner.

The Act provide that the employer be required to forward all complaints received by him about the conduct of a special provincial constable to the complaint commissioner for review;

Sectiion 50 of the Act be amended to expand the duties of the complaints commissioner to include complaints against special constables.

The Act give the complaint commissioner the authority to review all complaints made against special provincial constables to determine if the nature of them is such that, if true, the complaint could go to the fitness of the special constable to hold the appointment. The Act would further provide that only such complaints would be covered by the complaint provisions of the Act.

The following recommendations deal only with complaints that have been determined by the complaint commissioner to go to the fitness of the appointee to hold his appointment.

IT IS RECOMMENDED THAT:

The Act provide that the employer and the Solicitor General are the joint disciplinary authorities of the special constable in respect of complaints covered by the Act.

The Act provide that the complaint commissioner has the responsibility to investigate on behalf of the Solicitor General all complaints made against special constables and give the complaint commissioner the right to

-delegate the employer to investigate the complaint on behalf of the complaint commissioner; or

-investigate complaints directly; or

-retain a member of the provincial or a municipal police force to investigate the complaint.

NOTE: It is contemplated that in most cases the employer will investigate the complaint.

The Act provide that the employer give the complaint commissioner upon request access to all matters relevant to the complaint;

The provisions of the Act as they relate to status reports during the investigation of a complaint be made applicable to the employer as joint disciplinary authority;

The Act clearly provide that any discipline taken by the employer is independent of the right of the Solicitor General to revoke the appointment and that the appointment may be revoked even if the employer takes no disciplinary action;

The new regulation provide that the employer give the complaint commissioner notice of the outcome of any complaint including any discipline imposed by the employer;

The new regulation provide that the complaint commissioner make a recommendation to the Solicitor General at the termination of the employer's disciplinary process as to whether

-no further action is required;

-the special constable be required to take training or counselling at the employer's expense;

-the appointment of the special constable be revoked.

The new regulation provide that before the appointment of a special constable is revoked, notice shall be given to the special constable and time shall be allowed for the special constable to respond in writing or through direct representations.

No appeal from the revocation of appointment be provided for in the legislation.

The new regulation provide that the Solicitor General may revoke the appointment whether or not the complaint commissioner makes a recommendation and whether or not there was a complaint.

Employers responsibilities:

IT IS RECOMMENDED THAT:

All employers of special constables enter into a written agreement with the Solicitor General setting out the employer's responsibility to:

-Ensure adequate training for special constables;

-Ensure that the authority given to the special constable under his or her appointment is not exceeded;

-Maintain adequate standards and procedures;

-Discipline the special constable through a process set out in the agreement (That is, through the terms of the collective agreement or otherwise);

-Notify the Solicitor General if the special constable has been charged with a criminal offence or if he quits the employ of the employer;

-Notify the Solicitor General if the employer becomes aware of any conduct that would reasonably go the fitness of the special provincial constable to hold the appointment.

-Ensure that the special constable is not knowingly placed by the employer in a situation where his public duty as a special constable would conflict with his duty to the employer;

IT IS FURTHER RECOMMENDED THAT:

-Where special constables are given authority under their appointments to enforce the Criminal Code, the letter between the employer and the Solicitor General require the employer to ensure that arrest warrants and search warrants not be executed without an accompanying member of the provincial or a municipal police force;

Where special constables are given authority under their appointments to enforce the Criminal Code, all criminal investigations involving injury to a person be referred forthwith to the police force of jurisdiction.

Liability:

IT IS RECOMMENDED THAT:

The Act be amended to provide that the employer of a special constable is vicariously liable for the torts of a special provincial constable committed while on duty;

APPENDIX

SPECIAL CONSTABLE REGULATION (Alberta Regulation 357/90)

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SCHEDULE

Police Act

NOTICE AND RECORD OF DISCIPLINARY PROCEEDINGS

NOTICE
Police Service: _____ Date: _____
To: _____

You are alleged to have contravened the Police Service Regulation that governs the discipline and performance of duty of police officers by engaging in:

__*(quote relevant clause of section 5(1) of the Police Service Regulation)*__

as defined by section 5(2) ____ *(insert relevant clause and subclause of section 5(2) of the Police Service Regulation)*.

Details of Allegation:

(insert date, time, place and description of actions that constitute the allegation).

You are required to appear before a disciplinary hearing at __*(place)*__ on __*(date)*__ at __*(time)*__ to answer to this matter.

__*(signature of chief or designate)*__

Note: Submit the names of witnesses you wish to call to __*(presiding officer)*__.

Attachments: List of Witnesses _____
Statements of Complainant _____

Date served on cited officer: _____

__*(signature of person serving form)*__

RECORD OF PROCEEDINGS

Date Action/Disposition

(insert plea entered, adjournments (with dates), findings, punishment)

__*(signature of presiding officer)*__

Alberta Regulation 357/90

Police Act

SPECIAL CONSTABLE REGULATION

Filed: November 29, 1990

Made by the Lieutenant Governor in Council (O.C. 656/90) pursuant to section 61 of the Police Act.

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Definitions

1 In this Regulation,

(a) "Act" means the *Police Act*;

(b) "Board" means the Law Enforcement Review Board;

(c) "employer" means the person who employs a special constable;

(d) "employer's authorization" means an authorization to employ a special constable given under section 3.

Requirements for appointment re special constable

2 A person may be appointed as a special constable where the following requirements are satisfied:

(a) the employer or prospective employer, as the case may be, of the special constable is authorized by the Solicitor General under section 3 to employ a special constable;

(b) the Solicitor General is satisfied that

(i) the circumstances are such that there is a need for a special constable to provide the services of a peace officer in the particular circumstances,

(ii) with respect to the employment of that person as a special constable, the employer or prospective employer, as the case may be, has adequate policies and procedures respecting

(A) the carrying out of the authority, responsibility and duty of the special constable,

(B) the standard of conduct to be met by the special constable,

(C) the administration of discipline that is to be applied in respect of the special constable, and

(D) the handling of any complaints that may be made in respect of the special constable,

(iii) the services to be provided by the special constable do not conflict with or compromise any functions or policies of the Government of Alberta, and

(iv) the person who is to be appointed as a special constable is

(A) of good character, and

(B) qualified to carry out the services required of the special constable;

(c) the person who is to be appointed as a special constable

(i) meets the requirement of section 34 of the Act,

(ii) is 18 years of age or older, and

(iii) has not been convicted of an indictable offence or, if he has been convicted of an indictable offence, he is eligible to be granted a pardon in respect of that offence.

Employer's authorization

3(1) A person shall not employ a special constable unless that person is authorized by the Solicitor General to employ a special constable.

(2) In order to be considered by the Solicitor General for authorization to employ a special constable, an applicant for an authorization must

(a) complete and deliver to the Solicitor General an employer's application form as provided by the Solicitor General,

(b) provide or identify to the Solicitor General in writing the policies and procedures of the applicant respecting

(i) the carrying out of the authority, responsibility and duty by,

(ii) the standard of conduct to be met by,

(iii) the administration of discipline that is to be applied in respect of, and

(iv) the handling of any complaints that may be made in respect of,

any special constable who is to be in the employment of the applicant, and

(c) provide to the Solicitor General any additional information that may be requested by the Solicitor General.

(3) Where a person is authorized to employ a special constable, the Solicitor General shall issue to that person an employer's authorization in writing

(a) stating that the person is authorized to employ a special constable,

(b) specifying

(i) the authority, responsibility and duty that may be carried out by, and

(ii) the territorial jurisdiction of,

any special constable employed by that person,

(c) identifying or setting out

(i) the standard of conduct to be met by,

(ii) the administration of discipline that is to be applied in respect of, and

(iii) the procedure to be followed in handling any complaints that may be made in respect of,

any special constable that is employed by that person, and

(d) specifying any terms or conditions to which the authorization is subject.

(4) Subsequent to issuing to a person an employer's authorization, the Solicitor General may in respect of that employer's authorization vary any of the matters set out in subsection (3) where the Solicitor General is of the opinion that circumstances require the variation to be made.

Application for appointment as a special constable

4(1) In order to be considered by the Solicitor General for an appointment as a special constable, a person applying to be appointed as a special constable must

(a) either

(i) be employed by an employer authorized to employ a special constable, or

(ii) be subject to a written undertaking by an employer authorized to employ a special constable that the person will be employed by that employer if the person qualifies to be appointed as a special constable,

(b) complete and deliver or cause to be delivered to the Solicitor General

(i) a special constable's application form as provided by the Solicitor General, and

(ii) any additional information as may be requested by the Solicitor General,

and

(c) consent to one or more of the following being carried out as requested by the Solicitor General:

(i) a fingerprint search;

(ii) a criminal record search;

(iii) a review of any files that may be maintained by a police service.

(2) Where a police service conducts a review of records or files under this section it shall give to the Solicitor General the results of those searches.

(3) The Solicitor General may suspend or cancel a person's appointment as a special constable if that person knowingly made a false statement in respect of his appointment as a special constable.

Appointment

5(1) Where a person is appointed as a special constable under section 42(1) of the Act, the Solicitor General shall

(a) provide to that person's employer or prospective employer the document referred to in section 42(2) of the Act, and

(b) either

(i) authorize that person's employer or prospective employer to issue to the special constable a special constable identification card that is satisfactory to the Solicitor General, or

(ii) issue to that person's employer or prospective employer a special constable identification card for the special constable.

(2) The employer of the special constable shall

(a) where authorized to do so, issue to the special constable a special constable identification card, or

(b) provide to the special constable the special constable identification card that was issued by the Solicitor General for that person.

(3) A special constable shall carry on his person the special constable identification card while carrying out his duties as a special constable.

(4) A person's appointment as a special constable ceases to be in effect when that person ceases to be employed by his employer for the purposes of carrying out the duties of a special constable for which that person was appointed.

(5) When a person's appointment as a special constable ceases to be in effect or is suspended or cancelled,

(a) the person shall return his special constable identification card to the employer, and

(b) the employer shall return to the Solicitor General

(i) the document referred to in subsection (1), and

(ii) the special constable identification card where one was issued by the Solicitor General for that person.

(6) Subsequent to appointing a person as a special constable, the Solicitor General may vary the terms of the appointment where the Solicitor General is of the opinion that circumstances require the variation to be made.

Suspension or cancellation of employer's authorization

6 If an employer

(a) contravenes the Act or any regulations governing special constables,

(b) fails to act in accordance with the employer's authorization,

(c) knowingly permits a special constable employed by him to

(i) exceed the authority, responsibility or duty, or

(ii) act outside the territorial jurisdiction,

specified in the employer's authorization or the special constable's appointment,

(d) knowingly makes a false statement in his application for an employer's authorization, or

(e) knowingly permits or condones in any manner any action by a special constable employed by him that constitutes a failure by the special constable to meet the standards of conduct and other requirements to which the special constable is subject,

and fails to establish to the satisfaction of the Solicitor General that the employer's authorization should not be suspended or cancelled, the Solicitor General may suspend or cancel that person's employer's authorization.

Cancellation of appointment due to employer's actions

7 The Solicitor General may suspend or cancel an appointment of a special constable if the employer's authorization under which the special constable is employed is suspended or cancelled.

Provision of information

8(1) Every employer of a special constable and every special constable shall maintain records and submit reports as required under the Act or as requested by the Solicitor General.

(2) An employer shall advise the Solicitor General of any changes made or approved by the employer to the policies and procedures identified or set out in the employer's authorization or any conditions attached to the employer's authorization.

(3) The employer shall report to the Solicitor General every incident in which a special constable

(a) uses force that results in an injury, or

(b) when on duty, other than on a firearm training exercise or engaged in the destruction of a domestic or wild animal, discharges a firearm whether intentionally or by accident.

Complaints

9(1) Where a complaint is made in respect of a special constable, the employer shall investigate and dispose of the complaint using the procedure identified or set out in the employer's authorization.

(2) Where an employer is made aware, other than by a complaint, that a special constable employed by him has failed to meet the standards of conduct or other requirements to which the special constable is subject, that matter shall be handled as if it was reported to the employer by means of a complaint.

(3) Notwithstanding subsections (1) and (2), if the Solicitor General is of the opinion

(a) that excessive force may have been used by a special constable in the carrying out of his duties, or

(b) that the employer

(i) is not investigating a complaint in a manner that is satisfactory to the Solicitor General, or

(ii) has neglected to investigate a complaint,

the Solicitor General

(c) may cause an investigation to be conducted into the complaint and advise the employer of the results of the investigation, and

(d) may direct the employer to take any action that the Solicitor General considers appropriate in the circumstances.

Disciplinary action

10 Where the employer is satisfied that a special constable has failed to meet the standards of conduct or other requirements that are identified or set out in the employer's authorization, the employer may take action against the special constable in accordance with the disciplinary measures identified or set out in the employer's authorization.

Public complainant to be advised

11 Where a public complaint is made in respect of a special constable, the employer shall advise the complainant in writing as to the disposition of the matter in respect of which the complaint was made.

Suspension or cancellation of appointment

12 The Solicitor General may under section 42 of the Act suspend or cancel the appointment of a person as a special constable if in the opinion of the Solicitor General that person is not a fit and proper person to continue to hold the appointment of a special constable.

Appeal

13 Where

(a) an employer's authorization is cancelled, or

(b) an appointment as a special constable is cancelled,

the person whose authorization or appointment is cancelled may, within 30 days from the day he was advised in writing of the cancellation, appeal the cancellation to the Board by filing with the secretary of the Board a written notice of appeal setting out the grounds on which the appeal is based.

Conduct of appeal

14(1) Subject to this section, Part 2 of the Act applies to an appeal commenced under section 13 of this Regulation.

(2) On an appeal being concluded, the Board shall recommend to the Solicitor General

(a) that the appeal be allowed or dismissed, or

(b) that the decision being appealed be varied

(3) When the Board conducts an appeal,

(a) in the case of the cancellation of an employer's authorization, the Board shall provide a written notice of its finding to

(i) the appellant, and

(ii) the Solicitor General,

and

(b) in the case of the cancellation of an appointment as a special constable, the Board shall provide a written notice of its finding to

(i) the appellant, and

(ii) the Solicitor General.

Responsibility of the chief of police

15 Where a police service is required to carry out a function or provide a report or information under this Regulation, it is the responsibility of the chief of police or person in charge of that police service, or a person designated by him to carry out that function, to provide that report or information.

Delegation

16 Where authorized by the Solicitor General, the Director of Law Enforcement or another employee of the Government who is under the administration of the Solicitor General may carry out the functions of the Solicitor General under this Regulation.

Repeal

17 *The Special Constable Regulations (Alta. Reg. 109/73) are repealed.*

Alberta Regulation 358/90

Assured Income for the Severely Handicapped Act

ASSURED INCOME FOR THE SEVERELY HANDICAPPED AMENDMENT REGULATION

Filed: November 29, 1990

Made by the Lieutenant Governor in Council (O.C. 667/90) pursuant to section 13 of the Assured Income for Severely Handicapped Act

1 The Assured Income for the Severely Handicapped Regulation (Alta. Reg. 331/79) is amended by this Regulation.

2 Schedule 1 is amended by adding the following after section 1(h):

(i) a payment received under the Extraordinary Assistance Plan

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Alberta Regulation 359/90

Social Development Act

SOCIAL ALLOWANCE AMENDMENT REGULATION

Filed: November 29, 1990

Made by the Lieutenant Governor in Council (O.C. 668/90) pursuant to section 30 of the Social Development Act.

1 The Social Allowance Regulations (Alta. Reg. 92/75) are amended by this Regulation.

2 Section 1(1.2) is repealed and the following is substituted:

(1.2) A payment received by a person under

(a) the Japanese Canadian Redress Agreement, or

(b) the Extraordinary Assistance Plan

shall be exempt from the determination of the resources of that person.

Alberta Regulation 360/90

Judgment Interest Act

JUDGMENT INTEREST AMENDMENT REGULATION

Filed: November 29, 1990

Made by the Lieutenant Governor in Council (O.C. 670/90) pursuant to section 4(3) of the Judgment Interest Act.